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Giorgio Vasari's *Marriage Feast at Cana:* a Study in Repatriation

by

Hajnalka Santa-Balazs ©

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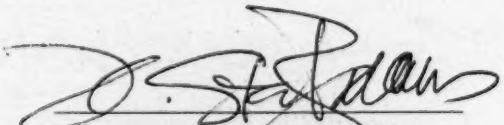

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The undersigned certify that they have read, and recommend to the Faculty of Graduate Studies and Research for acceptance, a thesis entitled "Giorgio Vasari's *Marriage Feast at Cana*: a Study in Repatriation" submitted by Hajnalka Santa-Balazs in partial fulfillment of the requirements for the degree of Master of Arts in History of Art, Design and Visual Culture.

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Abstract

Informed by the historical context of the Second World War and the war losses involving works of art, this thesis explores he repatriation of illegally removed or traded cultural objects. Its case study is a painting by the 16th century artist Giorgio Vasari, titled the Marriage Feast at Cana, that was returned to Hungary from Canada in 1999. An important component of this study is the examination of the concept of "cultural property," and the issues of protection policies affecting the status and future of such objects. It also explores how "framing" works of art in terms of cultural heritage in a national context can contribute to constructions of cultural nationalism, and to how these issues relate to the principles applied in individual cases of repatriation. It also considers the tension between the presentation of the museum as an ideologically independent cultural body, and the politicized role it often plays in the interest of the body politic.

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Introduction

Throughout western history, works of art have been reserved a special place in the world, occupying a unique category among other man-made things. Whatever the particulars of their cultural geneses may be, works of art in western society have come to be regarded more than just material manifestations of the human aesthetic impulse. Their forms have come to encapsulate immaterial concepts that transcend the physicality of these objects. Some are assumed to have qualities such as "cultural value" and "artistic significance," are said to be of "historical consequence," or belong to a people as part of their "national patrimony."[1] As material expressions of things intangible, works of art are sometimes transformed into potent cultural symbols that possess a powerful resonance to specific social groups. They can represent aesthetic prestige, have monetary value, or be a form of cultural collateral, factors which historically have allowed works of art to be transformed into symbols of power.

This acquired prestige, however, has also turned to the detriment of such objects. It is a sad irony that the same qualities which made them prized possessions were often also the causes of their misfortune. Over the centuries many have been damaged, destroyed, or have disappeared at the hands of looters, thieves, smugglers,

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[1] For a thorough overview of the main arguments that have been posed to support and to counter patrimonial claims, see, K. J. Warren, "A Philosophical Perspective on the Ethics and Resolution of Cultural Properties Issues-Introduction," The Ethics of Collecting Cultural Property Ed. P. Mauch Messenger (Albuquerque: University of New Mexico Press, 1989) 1-25.

unscrupulous dealers, and voracious art collectors. Their cultural cachet has often endangered their very existence, warranting the creation of modern day protection policies in order to preserve them for the benefit of the human community. These measures are based on the premise that important works of art are expressions of universal concepts and, therefore, they inextricably belong to the "cultural heritage of all mankind."[2]

There is a general agreement with the principle that significant examples of human creativity should be preserved and protected. However, when disagreements arise they often do with regards to the fundamentally universalist nature of the principle of global cultural protection, which was originally formulated within a United Nations framework. As the meaning of significant objects, structures, or works of art tend to vary in essence from one cultural group to the next, at the heart of such debates is always the question of whose cultural right should be upheld in assuming the duties of the custodian. These debates are often complicated by jurisdictional issues, questions of national sovereignty, and institutional or personal property rights, where striking a delicate balance between protecting the rights of ownership, while upholding universal principles is a complex, but not an impossible task.

The event that displaced the greatest quantity of cultural treasures in the history of the twentieth century was the Second World War. It not only ravaged the European continent, but was also

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[2] The term was introduced in the preamble of the text of the UNESCO Convention of 1954 held at the Hague, titled: Convention for the Protection of Cultural Property in the Event of Armed Conflict, signed at the Hague, on 14 May 1954.

the historical interagent of the Holocaust. Much of its components, including the orchestrated plunder of cultural wealth, are high-contrast issues, either exposed in bright light or cast in dark shadows. There are, however, many examples of spoliation that fall into grayer areas, while they are still linked to the events of WWII; displaced objects that do not necessary carry the magnitude of moral burden associated with the Nazi regime. Culturally significant objects lost under similar circumstances in wartime are all recognized by international jurisprudence as war losses, regardless whether they disappeared directly as the result of combat, of pillage, or in the ensuing chaos that inevitably follows military conflict. There are countless examples of displaced artifacts which fall into a less clearly defined, more ambiguous category, where questions of recovery and restitution are further complicated by peculiar constellations of historical factors or undocumented events. The subject of this thesis, Giorgio Vasari's Marriage Feast at Cana belongs in this category.

On November 1, 1999 the Prime Minister of Hungary and his entourage boarded a plane in Toronto bound for Budapest. The departing delegation had just completed an official visit that was described in the most glowing of terms by both Canadian and Hungarian parties. Escorted by an RCMP security contingent, the delegation was taking a small box onto the plane. The modest brown package contained a small oil painting by the 16th century Italian Mannerist painter and writer, Giorgio Vasari (1511-1574). The

picture, known as the Marriage Feast at Cana was returning to Hungary after a long absence. High level government negotiations concerning its fate began well before the official visit took place, but the final decision to repatriate the painting was not announced until October 28, 1999 during a state dinner given at the National Gallery of Canada. Upon its arrival at Budapest, the painting was ceremoniously handed over to the director of the Szépmüvészeti Múzeum (the Budapest Museum of Fine Arts), who came to meet the delegation at the airport. After its reception the Marriage Feast at Cana was returned to the Budapest museum and placed on display in its great central hall. In the following days Budapest newspapers were extending invitations to the general public to view the painting free of charge. It remained on display until the end of 1999.

This series of events formed the concluding chapter of a four-decade long dispute between two institutions over the ownership of the Vasari painting: the Budapest Museum of Fine Arts, and the Montreal Museum of Fine Arts, where the picture hung until the week prior to its return to Hungary. In the months leading up to the final settlement, the Budapest Museum of Fine Arts began to wage an aggressive public relations campaign in the international media for the repatriation of the Vasari painting. While Hungarian papers have followed the story from the early 1990s and have periodically reported on the case, it gained international attention only after its Canadian media coverage. The initial report that broke the story to a much wider audience was broadcast on February 28, 1998, as part

of the prime-time evening newscast of the CTV network.[3] Newspapers had their own parallel coverage, with the first report on the case carried in a front page article in the Montreal Gazette the same day.[4] The next day the story also appeared in a number of major Canadian newspapers.[5] By publicizing its plight in the popular media, the Budapest Museum of Fine Arts (BMFA) joined in the spotlight of attention a host of other high profile disputes that involved unjustly or illegally appropriated works of art.

The timing and the manner in which the BMFA moved the debate onto a highly visible forum have shown both the power of publicity, and the importance of gauging correctly the contemporary zeitgeist. The BMFA's interactions with both popular media and Canadian bureaucratic bodies demonstrated that those active on the institution's behalf recognized that final success was contingent on two crucial factors. Firstly, it was essential to build a convincing case which was supported by strong arguments with the right ethical resonance. Secondly, it was just as important that this case would be presented in an environment that was ideologically receptive to the rationale anchoring the BMFA's contentions. The argument the Budapest museum put forward had an intuitive moral appeal, because it resonated strongly with ideas about WWII and its aftermath, arguments that were already gaining prominence in

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[3] The reporter, Ken Ernhofer interviewed both Mayo Graham, the chief curator of the MMFA at the time, and István Barkóczi, curator of Old Masters' painting at the BMFA.

[4] Claude Arpin, "Museum Fights for its Art," Montreal Gazette 28 Feb. 1998: A1, 6.

[5] The story was posted on the Canadian Press Newswire and was picked up by both radio, and newspapers from coast to coast. Papers such as the Vancouver Sun, the Globe and Mail, the Ottawa Citizen, the Toronto Sun and the Edmonton Journal have all published condensed versions of the original story.

popular perception. By framing its case in terms of war, looting and restoration, the BMFA was able to create a story with recognizable characters and a plot that "played" well in the media: ancient treasures stolen by wartime looters, fallen into the hands of opportunistic collectors.

The Budapest museum aligned its case with two areas of contemporary discourse where restitution claims involving works of art most frequently arise: the displacement of art during WWII, and the loss of cultural treasures associated with colonial rule.[6] The international climate was becoming increasingly sensitive to repatriation issues, as both the traumas of the Holocaust and the social injustices stemming from colonialism still weighed heavily on both public and theoretical discussions. On the one hand the Budapest museum directly linked its claim to WWII losses, while on the other, it indirectly gained advantage from a climate transformed by the post-colonial debate. The latter had prepared the ground for openness in considering claims of restitution that relied specifically on patrimonial arguments.

In addition to a receptive climate and the moral charisma of their case, the negotiating position of the BMFA was also strengthened by the approach the Montreal museum chose to take in responding to the challenge from Hungary. The only response the MMFA offered was based on a narrow application of Quebec property law. The Montreal museum relied solely on the cold

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[6] It is useful to note here, that although the Budapest case had no direct argumentative relevance to the post-colonial debate that forms the ideological backdrop of restitution claims by indigineous peoples, the fact that the BMFA indirectly benefited from the growing trend of repatriating illicitly traded cultural objects is a relevant factor.

technicalities of the Quebec Civil Code by publicly arguing, that its initial purchase "in good faith," and its subsequently established possession were the only aspects of the painting's provenance that really mattered.

It may have seemed to the casual observer that the extensive public relations efforts dedicated to the return of this small painting were relatively excessive. Despite its diminutive constitution, the painting received enormous public attention, not for its aesthetic appeal or even for its monetary value, but more for what it came to symbolize.[7] The series of public rituals that accompanied its return underscored the same sentiments that engaged public interest in the first place. The painting became a localized flash point in a tangle of cultural and political issues that were far more complex than the rather ordinary question of ownership.

The publicized acrimony between the two museums aroused patriotic indignation in the Hungarian media, and embarrassment among much of the Canadian audience that followed the story. The deadlock of the two institutions stirred up a heated controversy, contributing to increasingly involved discussions in the media concerning the relationship of art to concepts of national identity, cultural heritage, historical justice, and the ethics of the relationship between cultural institutions and cultural property.

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[7] As Vasari paintings rarely appear at auctions, its market value is hard to estimate accurately. Estimated figures have ranged rather widely from 300,000 to a million dollars in various media reports. According to Dr. István Barkózci, the curator of Renaissance paintings at the BMFA, Italian experts contacted for an approximate figure put the value at around 700,000 dollars.

This thesis will use the post WWII provenance of Vasari's Marriage Feast at Cana as a case study to examine certain aspects of an area of discourse that has emerged with increasing frequency: a growing international trend to repatriate works of art displaced during WWII. Informed by the historical legacy of the Second World War, the goal of this study is to examine how "framing" a work of art, or art collection in a national context may play into constructions of nationhood, and national identity. It will also consider the tension between the museum's presentation of itself as an ideologically independent cultural body, and the actual, often politicized role it can play as an agent of the body politic. In addition, this thesis will explore how these issues relate to ethical principles applied in cases of repatriation, and to the formulation of new, historically informed guidelines governing the future conduct of cultural institutions.

In order to map the context in which the Marriage Feast at Cana became the focus of a publicized controversy, the chapters of this thesis will draw on a variety of methodologies, including theoretical positions, documented facts, and on mass-media sources.

Chapter 1 provides the most direct look at the history of the painting. It traces the provenance of the Vasari, and sets out to establish the circumstances of its acquisition by the MMFA. In examining the history of ownership and the process of the painting's 1963 Montreal purchase, this chapter relies on collating historical documentation (or a lack thereof) with the recollections and

accounts of former MMFA staff given to various reporters and media agents.

Chapter 2 sets the ethical *mise-en-scene* in both the international and domestic arenas. It sets out to identify the overall legal and ethical issues at stake, with particular attention to outline one specific interpretation adopted at United Nations discussions to define the meaning of "culture" and the concept of "cultural property." The chapter considers the Vasari painting in terms of the United Nations' approach of interpreting the notion of national heritage, as this was the ideological basis underlying the BMFA's patrimonial argument. Chapter 2 also outlines the ethical aspects of museum acquisitions, with particular attention to professional guidelines that outline the processes to be followed in dealing with works of art with incomplete provenances.

Chapter 3 examines the most recent cultural significance of the Vasari work, and the specific political mechanisms that were instrumental in raising its profile as cultural property. It also considers contemporary strategies applied by both the Budapest museum and the Hungarian government, to first regain the painting, and then, by making good use of this process, to foster economic, political, and military alliances. The chapter highlights some of the general strategies typically used to this end, in particular the Hungarian government's participation in high profile cultural events in the European Union. The illustrative example here is the Frankfurt Book Fair of 2000. This bi-annual event provided Hungary with a venue to re-emphasize its historical links to Western Europe, to highlight its cultural traditions, and to confirm its political

commitment to a larger European alliance as a member state of NATO[8] and as an aspiring member of the European Union.[9]

Chapter 4 considers the rationale of the concept of repatriation as a remedy in claims that seek the restoration of displaced cultural property to their most meaningful contexts. As "significance" is often discussed as a fundamental component of the definition of cultural property,[10] this chapter also examines in some detail the processes by which Vasari's painting accumulated its special significance: namely, through its incorporation into various successive, meaningful narratives.

Finally, the conclusion will review some new proposals that have been put forward, suggesting concrete steps museums could take in the future in order to distance institutions from the flow of objects passing through the illicit art market, and to reconsider the traditional models of museum display on the basis of ethical factors.

Repatriation tends to be a mainly political issue, as the measures protecting cultural property are closely linked to national or state interests. Much depends, however, on keeping such concerns in the forefront of public interest. Therefore, the thesis links together at key points the instrumental role the process of publicity played in initially engaging, then shaping public opinion in

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[8] Hungary membership in NATO was finalized in 1999. NATO Communiques and Statements 1998 (Brussles: NATO Office of Information and Press, 1998) 25.

[9] Negotiations for Hungary's accession to the European Union began in March 1998. Acceptance into the EU is expected sometime in 2002 or 2003, after the EU's Intergovernmental Conference, to be concluded by the end of 2002. Hungarian Ministry of Foreign Affairs: <http://www.mfa.gov.hu> and the Prime Minister's Office, <http://www.meh.hu/Kormany/Kormanyfo/1999/10/991028.htm>.

[10] F.G. Fechner: "The Fundamental Aims of Cultural Property Law," International Journal of Cultural Property 7 (1998): 380-381.

support of the return of the Marriage Feast at Cana to the Hungarian state.

As advocates of the BMFA have recognized from the beginning, publicity and the control of information, indeed, can be a paramount force of transformation. Through exposure in the popular media, restitution claims with colorful backgrounds tend to gain a higher profile. Widely publicized cases stand a greater chance of achieving satisfactory resolutions through less costly, non-litigius means, but they are also instrumental in spreading information about the very existence of such issues which do not normally intrude on mundane life. As the advocates of the BMFA have realized, a flow of information in a well publicized "scandal" can be the most effective tool in swaying the opinions of both the reading-viewing public, and of bureaucratic bodies conscious of popular sentiments. Sensational stories that tweak public fascination may be a more promising strategy to use in pending claims, than pursuing cases through potentially lengthy and costly court procedures. The focus of this thesis, the post-WWII provenance and repatriation of Giorgio Vasari's Marriage Feast at Cana, is a recent case which was resolved without court involvement in 1999.

Chapter 1

Provenance and the 1963 Acquisition

Although there was general agreement about the history of the ownership of the Marriage Feast at Cana by Giorgio Vasari prior to the painting's WWII disappearance, there was no consensus in the debate on whether its provenance was a relevant point to consider in the dispute. In this study, however, it will be necessary to discuss the provenance of Vasari's work because the painting's history will establish its undisputable place as part of the Eszterházy Collection, whose cultural significance and role in national history came to be a politicized point of emphasis in the recently established democratic Hungary.[11]

In turn, it also has to be recognized that this collection occupies an historically important place in Hungary's past. It took on a symbolic role at politically significant moments in the country's history when the emotional and patriotic stakes were high. Each time, these turning points radically altered the political course the country was taking. One impact of these historical milestones on the collection was that it accrued a strata of meaningful associations unique to its owners, which, as it was argued convincingly by the advocates of the BMFA, is what constitutes cultural treasure. They

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[11] The first mention of the painting is in an 1820 inventory of the Eszterházy art collection. Although mistitled as *Christus bei Simon den Pharisäer*, the entry under no. 896 provides both a description and the measurements of the painting.

also emphasized that as part of the nation's patrimony, the painting should fall under a different set of criteria in deciding its ownership.

A second important aspect of the painting has to be seen in a larger, international social context. The case has become not only a point of contention between the Budapest Museum of Fine Arts and the Montreal Museum of Fine Arts, but tied into the greater debate about questions such as what defines "war loss", and what rules should govern the destination to which things are returned. In this debate, the stakes are raised consistently higher than the market value of the objects in some cases would normally justify.

This chapter will trace the provenance of Vasari's Marriage Feast at Cana, as it is this history, unbroken until 1945, that formed the framework of the BMFA's argument in asserting their moral, and cultural rights of ownership. The Marriage Feast at Cana had a well documented provenance. It begins with Vasari's journey through Italy in 1566, and ends with its disappearance sometime at the end of 1944, or early 1945.

Considered to be more an imitator than an original painter by art historical scholarship, Vasari's contribution to the history of Western art should not be disparaged. Although he was active as a fresco and panel painter as well as an architect,[12] he came to be best known for his literary efforts. His book, The Lives of the Most Eminent Painters, Sculptors, and Architects is a collection of artists' biographies from the twelfth to the sixteenth century, which he first

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12 His most important architectural commission was the building of the palace of the Magistrates (Palazzo degli Uffizi) in Florence. It's construction began in March 1560 but was not completed until 1580, six years after Vasari's death. P.L. Rubin, Giorgio Vasari - Art and History (New Haven & London: Yale University Press, 1995) 16.

published in Florence in 1550, and later revised and expanded. This second edition of the book was also published in Florence in 1568. He was collecting material for this second edition when he was passing through central Italy in 1566. While in Perugia, Vasari accepted a commission from Jacopo Dei, the abbot of the Benedictine monastery of San Pietro to paint three panels for the refectory. To suit their intended location, the paintings were to depict miraculous feedings by three different holy figures: the Prophet Elisha, Christ at Cana, and Saint Benedict - the founder of the order.[13] Vasari signed and dated one of the finished panels now hanging in Perugia, and also commented on the commission in The Lives.[14]

In preparation for the commission, he produced several preliminary drawings and small scale oil sketches.[15] Two of the preparatory oil compositions survive: one with the theme of the Prophet Elisha[16] and the other, the painting in question, depicting Christ performing his first public miracle at a wedding feast at Cana.[17] The painting, a small oil measuring 40x28 cm, was originally painted on a poplar panel, showing Christ at a feast turning water

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13 Biblical references: 2 Kings 4, 38-41, John 2, 1-11.

14 "GIORGIUS VASARIUS ARETINUS FACIEBAT MDLXVI" as cited by P. A. Riedl in "Zu Einigen Toskanischen Bozzetti," Pantheon XXI (1963): 14.

15 See P. A. Riedl: "Zu Einigen Toskanischen Bozzetti" for a discussion of Vasari's preliminary studies for the Marriage Feast at Cana. Pantheon XXI (1963): 14-19.

16 Under inventory no. 1470 this painting is currently located in the collection of the Uffizi Gallery.

17 Riedl also suggests that the painting could either be a preparatory sketch painted as part of the proposal for the commission, or a scaled down copy executed after the completion of the full size work. There are also a number of preparatory drawings known to exist, all executed by Vasari for the Marriage Feast at Cana scene: one located in the Albertina in Vienna, the other in the Galleria Farnesina in Rome, and at least two others in private collections. Riedl: "Zu Einigen Toskanischen Bozzetti, "Pantheon XXI (1963): 19.

into wine. Today, the three final paintings hang in the Sacramental Chapel of the abbey church of San Pietro in Perugia. A surviving letter dated April 4, 1566 reveals that the abbot was quite pleased with the finished works. It is most probable that both oil sketches subsequently remained in the possession of the Abbey of San Pietro.[18]

It is not until 1820 that the Marriage Feast at Cana, although mistitled, turns up in a different part of Europe as the property of a different owner. It is listed in the catalogue of the Eszterházy Collection, which at the time was on display in Vienna.[19] Subsequent inventories, the two most important taken in 1844 and in 1871 also list the painting, identifying it as a work by Giorgio Vasari.[20] Due to their unswerving loyalty to the Habsburg crown, the Eszterházys rose to prominence and became one of the richest and most influential aristocratic families in the Habsburg Empire. From the 16th century onwards, generations of Eszterházy princes were avid collectors and enthusiastic patrons of the arts, particularly Miklós Eszterházy II (1765-1833), whose main interest lay in amassing an imposing art collection.[21] He spent months at a time in Italy searching, among other diversions, for art, purchasing paintings, prints, books, coins and antiques. It was either he or his

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18 I. Barkóczi, Von Raphael bis Tiepolo: Italianische Kunst aus der Sammlung des Fürstenhauses Esterházy (Frankfurt: Schirn Kunsthalle; Budapest: Szépművészeti Múzeum, 1999) 160.

19 Eszterházy inventory, entry No. 896, G. Vasari: *Christus bei Simon den Pharisäer.*

20 This was the inventory associated with the purchase of the entire collection, compiled after its transfer to the Hungarian state in 1870.

21 I. Barkóczi, "Esterházy," The Dictionary of Art Vol. 10. Ed. Jane Turner (Macmillan Publishers Ltd., 1996) 530.

grandfather who added Raphael's famed "Eszterházy Madonna" to the art collection.[22]

The family collections greatly benefited from the social upheavals stirring up Europe in the late 18th century. Beginning with the French Revolution and continuing during the Napoleonic wars, the waves of social flux had a pronounced effect on the art market. The French nobility was uprooted; its members lost their land titles and their sources of income, many were executed, in flight, in exile, or at best were stripped of the privileges of their social class. With a disenfranchised aristocracy on the move and strapped for cash, enormous quantities of art and treasures were changing hands on a highly liquid market. The first decades of the 19th century were abundant in opportunities to acquire below value, and the Eszterházy collectors took full advantage of this "buyer's market." They acquired valuable art and antiques from France, Italy and Austria, eventually amassing one of the most valuable aristocratic collections in 19th century Europe.

It is reasonable to assume that the Marriage Feast at Cana was most likely purchased on one of the Italian buying trips. It is also possible that the painting was absorbed into the family holdings as part of another group of works, as the Eszterházy's sometimes acquired collections *en masse* from various sources across Europe. Ironically, the painting came to Hungary the same way it would later leave. War and social upheaval in one part of the world created an

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22 I. Barkóczi, "Eszterházy," The Dictionary of Art Vol. 10. Ed. Jane Turner (Macmillan Publishers Ltd., 1996) 530.

opportunity for collectors in another, more secure country to gain possession of treasures from an unstable area.

By 1806 the Eszterházy collection was one of the most comprehensive of its kind in Europe. Too enormous to store at the family seat in the town of Kismarton, it was moved in 1814 to a newly acquired palace in Vienna.[23] A year later the collection, a showcase of power, wealth and taste, was opened for public viewing twice a week.[24] Within a short time the exhibition became one of the chief attractions of the Habsburg capital.

Acquisition continued until 1821 when the Eszterházys' military expenses incurred in the Napoleonic wars and their excessive spending on the collections ended nearly three centuries of extravagant collecting. Pressured by persistent financial troubles, the new successor to the title, Prince Miklós Eszterházy III (1817-1894), was forced in 1867 to begin liquidating the family estate, including the art collections, to cover his military expenditures. A substantial portion was moved to the city of Pest (now part of Budapest) in 1865. This part of the collection consisted of 636 paintings, including the Vasari, approximately 3,500 drawings, and about 50,000 prints.[25] Some of this art was put on display in the Hungarian Academy of Sciences. In 1870, by an Act of Parliament, the Hungarian Government purchased the collection, which formed the nucleus of what became the Szépmüvészeti Múzeum (Museum

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23 An inventory taken in 1820 lists Vasari's Marriage Feast at Cana as part of this collection. In addition to this list, another inventory compiled in 1844, as well as subsequent catalogues of the Eszterházy wealth also mention it.

24 I. Barkóczi, "Esterházy," 530.

25 *Ibid.*

of Fine Arts).[26] In 1896 the institution of the Museum of Fine Arts was officially established, and in 1906 it moved into a new structure built specifically to house the museum and its collections. Vasari's Marriage Feast at Cana remained there until 1942, while Hungary was still a German ally, when it was lent out to be displayed in the Ministry of Finance. This was to be its last known location until its surprising reappearance in Montreal in 1963.

Nothing is known about the painting's whereabouts during the intervening years. Equally mysterious are the circumstances of its disappearance. The German occupation of Budapest in March of 1944 was immediately followed by the officially orchestrated confiscation of art works and other cultural valuables that was a matter of policy in the Third Reich. As it did elsewhere in Europe, this operation systematically targeted museums, major private collections and especially the assets of the Jewish population. In the final days of the war the museum's most valuable and important works were speedily crated and shipped to Germany, an event which further complicated post-war efforts to locate missing treasures.[27]

However, the Vasari seems not to have been taken by the Nazis. This may be because they considered it an unimportant work, but more likely, its location outside the museum led to it being overlooked. The Ministry of Finance did not remain a haven for

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[26] The collection is catalogued again in 1871 and it too mentions the Vasari painting. Subsequent catalogue entries of the holdings of the National Picture Gallery and later the Museum of Fine Arts include the work as well. For a brief overview of the collection's history also see: E. Marosi, "Museums," The Dictionary of Art Vol. 15. Ed. Jane Turner (London: Macmillan Publishers Ltd. 1996) 10-11.

[27] Klára Garas, "Introduction," Museum of Fine Arts - Budapest (New York: Newsweek Inc.; Milan: Arnoldo Mondadori Editore, 1982) 10, 165.

long. In addition to the organized looting of the invading Russian troops, many valuable works of art, particularly the easy to hide, portable, small scale pieces, such as the Vasari, fell victim to the rampant theft that accompanied the chaos. These were also the types of art work that proved to be the most difficult to trace or to recover. During the chaotic endgame of the war on the European front, Budapest was under siege, devastated by allied bombing raids and street-to-street gun battles. The city suffered severe damage not only to its physical structures, but also to its cultural assets as well. The Museum of Fine Arts was severely damaged and the Ministry of Finance, located on the geographically vulnerable Castle Hill, suffered a direct hit in 1945. Subsequently, the painting was presumed destroyed.

After the war, it was difficult to determine what was actually destroyed or "just" missing, or stolen. Museums and cultural institutions began assessing the damage, attempting to locate lost works, and initiating recovery efforts - some of which continue to this day. The Vasari painting was first included in a catalogue of war losses, compiled by the Museum of Fine Arts in 1952. The list contained descriptions of 925 missing works, 707 of them paintings.[28] Gradually, much of the institution's losses were recovered; shipments of confiscated art were returned by Germany, while antique and second-hand shops across the country were

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[28] Item # 649 on the list gives the artist as Giorgio Vasari, the title as the Marriage Feast at Cana, the last known location, medium, size, original inventory number and detailed description that matches the painting in question. Published by Múzeumok és Műemlékek Országegos Központja, [Centre for Museums and Monuments] Budapest, 1952: 73.

turning up lost or stolen valuables for years after the war. Vasari's small sketch, however, remained on the museum's list of war losses.

The years between 1944 and 1963 remain a large gap in the painting's otherwise well documented provenance. It may be possible in the future to account for that time with more certainty, once documentation and other relevant information that may currently be in the files of the Montreal Museum of Fine Arts are made available for scrutiny. The MMFA, however, has decidedly refused to divulge any information regarding the circumstances of the Vasari acquisition, declined to confirm a purchase price, or share any verifiable documentation that would shed light on the painting's progress across the formidable political barriers of Cold War Europe established after 1945.[29] Unfortunately, the museum has maintained its silence over the details of the matter, even now, when intervention by the Federal Government of Canada has settled the issue with the final repatriation of the painting in 1999. The MMFA's spokesman, Maurice Boucher, described the painting's return as a "goodwill gesture" and a response to "exceptional circumstances," but would not divulge any information regarding the final agreement brokered by the Office of the Prime Minister between the National Gallery and the MMFA.[30]

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[29] To the query of this author the Curator of Old Masters Paintings at the MMFA responded, ". . . this dossier is not accessible for research, and will remain confidential until the matter is settled."Correspondence from Dr Hilliard T. Goldfarb, October 27, 1998.

[30] In a November 1999 interview with Chris Cobb, a reporter for Ottawa Citizen, Boucher still insisted on the legality of his museum's ownership of the Vasari, and while he revealed that the MMFA was "amply compensated" for its loss, he refused to give figures or details. Chris Cobb, "Canada's 'Goodwill Gift' a Real Masterpiece," Ottawa Citizen 2 Nov. 1999: A2.

Despite the enigmatic silence, however, it is possible to reconstruct some of the data possibly being withheld by the MMFA. A plausible sequence of events can be identified to trace the painting's whereabouts, based on the recollections of former MMFA directors, interviews with BMFA staff, newspaper articles published about the case, and inferences based on the historical post-WWII realities in Hungary at the time. What is certain is that the painting resurfaced in Montreal in 1963, much to the astonishment of the curators at the BMFA. They only learned of its reappearance in 1964 from an announcement under "important new acquisitions" in the international art magazine, Pantheon.[31] According to Dr. István Barkóczi, currently a curator at the BMFA, then director, Dr. Klára Garas sent a letter to Montreal immediately, demanding the return of the Vasari, which the BMFA argued, was their missing property.[32] In a reply dated two months later, the MMFA refused the request.

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31 Originally in German, the announcement states: "The Montreal Museum of Fine Arts obtained the Marriage Feast at Cana, a small sketch in oil, painted by Vasari. The picture is a study for a larger altarpiece, which Vasari executed in 1566 for the Church of San Pietro in Perugia; for a long time the sketch was in the possession of the Eszterházy family in Budapest." Pantheon, XXII 1964: 411.

32 It should be noted, that the demand of the Hungarian curators was based solely on the assumption that the painting described in the announcement was indeed genuine. Lacking scientific evidence, initial condition report, or documentation authenticating the painting, it appears that the director of the Budapest museum relied exclusively on the expertise of Dr. Turner at the Montreal museum. The issue of authenticity is further complicated by the fact, that sometime in the late 1970s the painting has undergone "restoration." At this point the original poplar panel support was removed, and the painted surface-layer was applied to an aluminum backing. Subsequently the original panel has disappeared. This is an important point, since the original support could yield a wealth of information regarding questions of authenticity. Supports of paintings are often labelled, signed, stamped or otherwise identified by successive owners, thus the backing typically bears evidence of ownership. As a historical record, it could provide material evidence to track or confirm the provenance of a work of art. By stripping away, and subsequently "losing" the support panel, potentially important information may have been destroyed in this process at the MMFA.

Over the years different directors of the BMFA made several futile attempts to reclaim the Vasari. In view of Quebec's Civil Law regarding property and ownership, a detrimental factor to the Hungarian claim was the lack of will from higher officials to pursue the claim immediately through Canadian legal channels. Under the political system that ruled Hungary prior to 1989, the BMFA could not secure the necessary support from any of the governmental branches whose jurisdictions applied to the conflict. Such admission may appear quite damning on the surface, but an important distinction has to be made: from the assumption that recovery efforts for missing art may have been low priority to some departments of a massive government bureaucracy dominated by a communist regime, it does not naturally follow that neglect of cultural patrimony or disregard for the nation's lost treasures was tacit policy.

Despite recovery efforts, some of the displaced or stolen art was passed on undetected. According to an account given to the *Montreal Gazette* in 1998 by Mayo Graham, then Chief Curator of the MMFA, the museum was offered the painting for acquisition by a Montreal or Toronto resident in 1962 or 1963.[33] The seller allegedly was a woman who was given the picture by her father, a Hungarian citizen, who supposedly bought the painting in a Budapest antique consignment store. Still in business, the store, No.63 of the Bizományi Aruház Vállalat (or BAV), is one of many in the government-owned and operated chain of stores across the country.

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33 Claude Arpin, "Museum fights for its art: Vasari oil painting pits Montreal vs. Budapest," Montreal Gazette 28 Feb. 1998: A1, 6.

They deal in private property only, taking art and antiques from individuals on consignment. The Hungarian man paid 944 Forints for the painting, the equivalent of about $100 dollars in 1961.

According to the date on the apparently notarized photograph of the receipt (No. 334752) in the archives of the MMFA, the picture was purchased on March 29, 1961 in Budapest.[34] The original is believed to be still in the possession of the seller whose identity is protected by confidentiality rules that generally regulate museum acquisitions, so the examination of the original receipt is out of the question. Requests for access to examine the photograph copy have also been denied. The only public or media access granted to documentation was to the initial CTV camera crew which covered the story that aired in February of 1998.[35]

The receipt held up to the camera by Mayo Graham yielded little information, and could only be deciphered from a few still frames on a videotape. Based on the limited quantity and quality of information, there is nothing concrete to link the receipt to the painting. It only states that the work is by an unknown artist, no dimensions are given, it contains the number of the receipt, the price of 944 Forints paid, and the date of purchase. In addition to the lack of documentation, the process by which the MMFA carried out the attribution of the work presents some problems as well. Somewhat inconsistent accounts are given by two previous directors, Dr. Evan Turner and Dr. David Carter, the chief curator, Mayo Graham, and the Public Relation Director, Maurice Boucher.

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[34] *Ibid.*

[35] CTV News, February 15, 1998. Reporter: Ken Ernhoffer

When compared to one another, their recollections or accounts of the acquisition are inconsistent or even contradictory, raising more questions than they answer.

Dr. Turner, who received his PhD. in art history from Harvard University with a specialty in European painting from 1300-1914 was the director of the MMFA between 1959 and 1963. The transaction took place under his tenure. According to Graham, nobody who was involved in the transaction knew the true authorship of the unsigned painting, although she remarked that "Turner suspected that it may be by Vasari".[36] Maurice Boucher, Public Relation Director for the MMFA, tells a slightly different version of the attribution. In an interview on February 28, 1998 with La Presse, he stated that the painting initially was attributed to Fontana, but "once within the Montreal museum, the curators realized that it was a Vasari."[37] According to Graham, Turner wrote to UNESCO in Vienna, inquiring about the painting in order to find out if it was missing from one of the institutions and why it was available.[38] Whether the request was sent to UNESCO before, or after the final attribution invites some questions regarding the procedures the MMFA followed.

The request to UNESCO itself assumes that curators at the MMFA were indeed aware that the painting had originated from a European art institution. A competent investigation would have

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[36] C. Arpin, "Museum fights for its art: Vasari oil painting pits Montreal vs. Budapest," Montreal Gazette 28 Feb. 1998: A1, 6.

[37] Jocelyne Lepage, "Budapest réclame un tableau acquis par le MBA," La Presse 28 Feb. 1998: D12.

[38] C. Arpin, "Museum fights for its art: Vasari oil painting pits Montreal vs. Budapest," Montreal Gazette 28 Feb. 1998: A1, 6.

readily revealed the identity of the published institutional owner. In fact, the painting is listed in two standard art reference works commonly used by museum professionals: the 1940 edition of Thieme-Becker Lexicon and the 1960 edition of Bénézit Art Dictionary.[39] Both volumes clearly identify the painting and its location as the BMFA. The notarized photograph of the receipt, which, as the MMFA claimed is the proof of the legitimacy of the antique shop purchase, only complicates the issue further, as the document itself points to Hungary as a country of origin. It could have substantially narrowed down the curators' spectrum of research, even if they assumed that writing to a communist country would have been an exercise in futility.

Turner defended the museum's actions in an interview given in February 1998 to the Montreal Gazette. He stated that the museum followed principles set down by UNESCO with regards to acquisition procedures, and announced the purchase in trade publications. It is true that the museum announced its purchase in two professional magazines with wide, international circulations: in the February 1965 issue of the Gazette des Beaux-Arts[40] and in the already mentioned November/December 1964 issue of Pantheon.[41]

The mentioning of trade publications, particularly Pantheon, does not really help the case of the MMFA, since it was the same

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[39] Ulrich Thieme & Felix Becker, Allgemeines Lexikon der Bildenden Künstler (Leipzig: Verlag von E.A. Seemann 1940) 122.
E. Bénézit, Dictionnaire Critique et Documentaire des Peintres, Sculpteurs, Dessinateurs et Graveurs (Librairie Gründ 1960) 480.

[40] Gazette des Beaux-Arts February 1965: 21.

[41] Pantheon, XXII 1964: 411.

magazine which published, in the very year of the purchase (1963), an article by P.A. Riedl on Tuscan drawings.[42] The essay specifically used the Vasari commission in Perugia as one of its main subjects of investigation. The magazine featured several reproductions of drawings for the Marriage Feast at Cana, as well as a prominently placed, and clearly recognizable illustration of the painting. The caption conclusively identified the artist as Giorgio Vasari, gave the correct title, and identified the owner institution as the "Szépmüvészeti Múzeum" in Budapest.

It may be argued that this publication escaped the attentions of the curators at the MMFA, or that the library did not have a subscription to the magazine. As there is no date stamp on this issue of the magazine that would indicate its date of entry into the holdings of the museum's library, it can not be said conclusively that museum officials involved in the acquisition had this information at their fingertips. However, of all the other trade publications the curators could choose, the fact that the museum published its announcement in Pantheon points to the contrary. As of November 1998, an original copy of this issue of Pantheon was still in the library of the MMFA.

In fact, expanding the library was one of the priorities of the museum, as singled out by the director, Dr. Turner in the Annual Report for 1963-64,

> The library may be considered a factor in the curatorial program of the Museum, even as it is a major element in our

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42 P. A. Riedl in "Zu Einigen Toskanischen Bozzetti," Pantheon 1963: 14-19.

> educational pattern. During the past five years its growth has been the greatest possible satisfaction.[43]

Regardless of scholarly publications, the museum waited for the answer from UNESCO. When there was no response from Vienna, the MMFA proceeded with the acquisition in 1963. Although Graham, while talking with the Montreal Gazette, would not say how much the museum paid for the painting, the article revealed, that ". . . two former directors of the MMFA told the Montreal Gazette the seller accepted $2000 dollars."[44]

As the various recollections of the circumstances of the original purchase are inconsistent, whether the painting was already authenticated at the time of acquisition, or the museum merely acted on the basis of Dr. Turner's 'suspicion' and purchased a potentially worthless picture for $2,000 dollars, is hard to say for certain. The former option is ethically suspect, the latter foolish, considering that the museum carried a deficit of over $200,000 dollars in 1963-64, and was dealing with inadequate acquisition funds. The Annual Report for 1963-64 calls attention to this problem: "The Director's annual observations on the inadequacy of the Museum's acquisition funds, given the current state of the international art market, are truer than ever."[45] Whichever the case, today, the estimates of the painting's value range between $300,000 and $1 million dollars.

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[43] Annual Report 1963, The Montreal Museum of Fine Arts: 19.

[44] C. Arpin, "Museum fights for its art: Vasari oil painting pits Montreal vs. Budapest," Montreal Gazette 28 Feb. 1998: A1, 6.

[45] Annual Report 1963, The Montreal Museum of Fine Arts: 18.

The museum maintained its position that it purchased the Vasari in "good faith," believed that it was legitimately bought, and was unaware of its suspect post-war reappearance or of the cloudy circumstances of its arrival to Canada.[46] The MMFA argued that the painting can not be considered a war loss since it was legitimately bought in a state-owned consignment store. Consequently, as their logic goes, since the state owned both the painting and the store, the state was selling its own treasure through its own store.

Such a fallacious argument attests, at best, to exceptional naiveté if not ignorance, about the historical realities of life in the countries of the Soviet block under a communist regime. At the end of the 1940s, businesses under communism were absorbed by the state, and private enterprise was virtually non-existent in Hungary in those decades, including the 1960s. Everything was state-owned, whether the store sold antiques or tractor tires. Therefore, the ownership of the store that sold the Vasari is irrelevant to the argument, and so is the assertion of Maurice Boucher, that "the state has no one to blame but itself" for letting its treasures slip through the cracks of its own bureaucracy.[47] Instead, the question that should be asked is this: regardless of its pending attribution, how was it possible that a Renaissance work, suddenly appearing in Montreal at the height of the Cold War, raised no suspicions in art experts negotiating in "good faith?"

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[46] C. Arpin, "Museum fights for its art: Vasari oil painting pits Montreal vs. Budapest," Montreal Gazette 28 Feb. 1998: A1, 6.

[47] *Ibid.*

This indeed is strange, since the average Montreal resident knew about the Hungarian uprising of 1956. Montreal was one of the major centres favoured by newly arriving Hungarian immigrants who fled during the Revolution. In 1962, six years after the uprising, Hungary was still under Soviet occupation. Very few people were allowed to cross the Iron Curtain. Tourism to the West was virtually non-existent until 1975, when Hungary signed the Helsinki Accord for Human Rights. To obtain an exit visa overseas was a complicated matter, granted only on the basis of an invitation, and even then it was often denied by Hungarian authorities.

In addition to the restrictions posed on the freedom of movement, Hungarian laws also prohibited the export of certain antiquities, manuscripts or works of art. An act introduced in 1949 ruled that no work of a non-living artist could be exported without a permit issued by the Ministry of Culture, and that all work older than 50 years required a permit as well.[48] Consequently, the removal of the Vasari from the country was illegal, unless it was accompanied by a valid export permit. Since the Montreal museum has closed the dossier on the Vasari, it is unclear whether there is such a document in the artifact files of the MMFA. Even if the painting was legitimately purchased, it is highly unlikely that an export permit would have ever been issued, as the published list of missing art works, complete with a detailed description, was accessible to the export officers of the Ministry of Culture. Were an export permit, issued by Hungarian authorities for this painting, in

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[48] A. Francoeur-Mécs, legal council to the Budapest Museum of Fine Arts. Personal interview, 13, July, 1998.

the possession of the MMFA, it would make a strong case against Budapest. The fact that no such document has ever been mentioned by Montreal, points to the conclusion that it does not exist.

Before its return, Dr. Barkóczi of the BMFA referred to the painting as a "missing link" in an otherwise comprehensive Florentine collection. It is not by chance that the group of paintings, most desired to be "complete" and discussed with the greatest of reverence, is Italian art. In the popular imagination the art of the Italian Renaissance is what comes first to mind as quintessential European art. Through his biographical efforts Vasari himself was greatly responsible for the development of this perception. In the narrative of Western art history the Italian Renaissance has been elevated as the artistic high point of cultural production. Vasari's own publications emulate the achievements of this period as one which superseded all previous creative efforts, including the artistic accomplishments of Antiquity. Not only did Vasari play a crucial role in establishing the Western canon of art, but he presented himself as one, who was also an integral part of its cultural achievement.

While the art of the Italian Renaissance epitomized European art, the same notion of "Europeanness" characterized the courtly Eszterházys: their cultured, worldly, cosmopolitan values, and their magnificent art collections struck a similar chord. The resurrection of the Vasari ownership debate and its unexpected vigor were closely tied to the meltdown of Communism as a political and economic model in Central Europe, and to the social project of reinventing national identity by reaffirming cultural belonging

through emphasizing historical links. Having been released from the constraints of contorted uniformity enforced under the supernational Soviet conglomerate, there are social movements within the small, previously marginalized former Eastern Block nations aiming to reconstitute themselves by reconstructing their national identities under the aegis of European culture. To this end, the ethnically Hungarian but culturally European Eszterházy family represent a most suitable model. Hungarian organizers were given a superb opportunity at the 1999 Frankfurt Book Fair to demonstrate how deeply "European" are the roots of Hungarian national culture. Therefore, the star of the Frankfurt art exhibitions designed to showcase the gems of Hungarian culture, was a grand display of art from a long line of Italian schools of painting assembled from the Eszterházy collection.[49]

When we consider the underlying strategy and ultimate goals of the Frankfurt exhibition program within the context of such high stake issues as national culture, national identity, and the reclamation of suppressed history, the fight for the return of this diminutive painting through its association with such a contested battleground, takes on an epic character. It was neither the market value, nor the significance of the Marriage Feast at Cana as an aesthetic object, that gave the clash over the painting its substance. What made the dispute important was its public revelation of how two museums, both based on a common model and with apparently

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[49] Press release for the 2000 Frankfurt Book Fair. <http://www.frankfurt-book-fair.com/pages/41budapest-e.html>. Also see I. Barkóczi: Von Raphael bis Tiepolo: Italianische Kunst aus der Sammlung des Fürstenhauses Esterházy (Frankfurt: Schirn Kunsthalle; Budapest: Szépművészeti Múzeum, 1999).

similar cultural functions, could hold such conflicting notions about the cultural, political and historical significance of art.

Chapter 2

Collecting Cultural Property

In the past five hundred years much of the intellectual effort of European thinkers has been focused on three important areas of thought: the evolution of the nation state, the nature of art, and the notion of individual and human rights. Modern day legislative bodies have built their protection strategies drawing on ideas from all these fields. More specifically, the development of measures for the protection of cultural property has followed a transdisciplinary approach. Policy advisers, national legislators, and those who drafted international documents have all relied on contributions from disciplines as diverse as philosophy, history, economics, art history, and political science, among others.

From the early stages of recorded history there have been progressive thinkers who argued that man-made objects which embody singular notions about the human condition deserve protection from theft, looting and wartime destruction.[50] During the past two centuries these initially sporadic voices urging the need for preservation grew in frequency and volume. Today there is an

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[50] The genesis of the idea dates back to the 3rd century B.C.. The earliest advocate of cultural property protection was Polybius of Athens, a Greek historian and diplomat in the 3-2nd cent. B.C.. He witnessed and recorded some of the major military events of his time: the destruction of Carthage and the sack of Corinth by Roman troups in 146 B.C. among others. Polybius saw the common military practice of confiscating culturally important objects from a conquered people as a moral dilemma above all. He personally refused to receive anything from looted treasures distributed by the Roman army, urged his friends to do the same, and wrote on several occasions about the ethical implications of the practice in his accounts. Evelyn S. Shuckburgh, trans. The Histories of Polybius (London and New York: Macmillan and Co., 1889).

impassioned school of thought that continues to advocate taking active steps in international protection policy to preserve the cultural diversity of the world's population, and protecting cultural treasures is an important aspect of the preservation of this greater cultural wealth.

The need to afford mandatory protection to irreplaceable cultural treasures has been molded into concrete form in the arena of international law. One of the greatest effects of these initiatives was their becoming a conduit for international co-operation in cultural preservation, and providing the impetus for a growing number of sovereign states to enact their own domestic legislation in this area. Demonstrably, jurisprudence is a substantial segment of the contextual backdrop which sets the scene for the conflict involving the Vasari painting. In most cases it is at the institution of the museum, the most readily visible, high profile venue, where the tangible nature of the 'object' intersects with the abstract notion of the work of art as cultural property. Law provides the framework within which the painting is defined as cultural property. This, in turn, creates the basis for an expectation of legal protection, and the basis for the various competing claims of ownership. In fact, it is doubtful that the word "ownership" or "property" can ever be used without invoking some kind of legal context.

This chapter, then, will deal in a non-technical way with those threads of law that are inextricably tied to the Vasari controversy, including the concept of 'cultural property.' What protections did the various legal systems give to competing claims of ownership? What protections did they afford to the painting itself? How have

changes in legal and ethical codes since 1963 set in motion the forces that drove the principal actors in this story? It is useful to keep in mind that laws are neither about ethics, nor about history. The state of affairs the law mandates is not necessarily a description of the world as it actually is, or was, or even ought to be. However relevant they may be, issues of law are only one side of this story.

Ethical questions are as pertinent to this dispute as they are to any other aspect of human life. It is entirely appropriate to consider the conduct of the principal players in the Vasari case in light of not simply normative morality that applies to us all, but in terms of professional ethical standards. Admittedly, facing decisions involving moral judgement-calls in past museum practice may have been a more complex issue, due, in part, to two contradictory considerations.

On one hand, museums have derived much of their social prestige from their commonly proclaimed role as repositories of the cultural heritage of humanity. This sentiment was echoed in a 1985 statement by the director of the British Museum at the time, David Wilson:

> The universal museums have looked after the collections for many years – they are great monuments to man's achievement. . . . Only in them can we grasp some idea of the totality of man's mind, its possibilities, its weaknesses, its similar or different reactions.[51]

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[51] As quoted by S. Sullivan in "Repatriation," Conservation - The GCI Newsletter 14.3 (1999): 20.

This rather exalted position has been for long coupled with a tacit expectation of adherence to a higher-than-median ethical standard. The esteem commanded by the museum is expected to be a force strong enough to compel the guardians of the institution to conduct business in a morally irreproachable manner.

On the other hand, what these high minded expectations entailed was mostly implied, rather than made explicit. For a long time museums were expected to live up to standards defined only vaguely, while navigating their affairs in a legally ambiguous milieu where the lack of comprehensive laws, both international and domestic, left legally and morally problematic decisions largely in the hands of directors, curators, and museum boards.

In the wake of WWII there was a growing recognition that a universal consensus governing museum practice was needed in order to effectively protect works of art and other cultural treasures, and to ensure the unity of purpose and the integrity of the profession. This led in 1946 to the establishment of the International Council of Museums (ICOM). In order to become an effective transnational cultural organ, the organization subsequently developed its own, self-imposed code of ethics and regulatory measures.[52] Its ethical rules, although subject only to voluntary compliance, cover a broad range of museum practices, including guidelines for acquisitions at a local level.[53] It was this latter issue

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[52] S. A. Williams referencing footnote 547 on pg. 232 in Nafziger: "Regulation by the International Council of Museums: An Example of the Role of Non-Governmental Organizations in the Transnational Legal Process," 2 Denver Journal of International Law and Policy (1972): 231.

[53] Section 3, "Acquisitions to Museum Collections," ICOM Code of Professional Ethics. <http://www.icom.org/ethics.html>.

that was singled out in the patrimony debate concerning the Vasari painting. The BMFA' s assertion that a respectable museum has a moral obligation to adhere to professional and ethical standards formed the fulcrum of the argument at the final, and successful attempt to regain the painting. Therefore, the second goal of this chapter is to examine the Vasari purchase with relation to the ethical background articulated by the code of ICOM, with particular attention to guidelines outlining the investigation of provenances in acquisition procedures.

These two frameworks, the legal and the ethical, although interrelated are also distinct. Morality, a system of ethical principles that ought to govern individual choices, is not to be confused with the law, the system of authoritative rules and sanctions. Organizations such as ICOM may be commendable for codifying such laudable principles, and may even be generally effective by applying a strategy of shame, but laws aimed specifically to protect cultural property are essential because they are the conduit through which this protection can be realized.[54] They lend the legislative backing necessary to uphold ethical principles which may otherwise amount to no more than abstract ideals. While most museums comply voluntarily with professional standards most of the time, the sanctions of law are needed as a deterrent in situations where

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54 While individual members who engage in unethical behavior could face expulsion, there are no provisions against non-compliant institutions in the ICOM codes. Perhaps the most effective strategy - as it has been proposed - is a voluntary boycott of violators imposed by fellow institutions. The threat of becoming a pariah among peers may be a more effective deterrent then any other, difficult to enforce sanction. From S. A. Williams: The International and National Protection of Movable Cultural Property-A Comparative Study (Dobbs Ferry, New York: Oceana Publications, 1978) 144.

opportunistic purchases or even illicit deals prove to be too tempting to resist.

International jurisprudence has contained provisions to protect culturally important materials since the 19th century, but the rules had evolved under the rubric of laws governing warfare, so their application was limited to military conflicts.[55] Following WWII, a number of new measures were introduced which aimed to address the new conditions unfolding in the post-war era. The need for this new theoretical framework of cultural protection grew both from changes in the relevant intellectual disciplines, and more pressingly, from practical issues.

The most immediate practical demands to establish a legal framework stemmed from the general conditions following WWII, specifically the displacement and the ensuing illegal traffic in cultural treasures. The aftermath of the Second World War presented the type of problems which always accompany war and social instability, but on a scale and complexity so great that it superseded all others in recorded history, making the need for action absolutely obvious to all. In addressing tangible needs and reparations, the most immediate priority concerned the enormous group of dispossessed people. Closely following in importance was the recovery of pillaged or otherwise dislodged property, and the restitution of both private treasures and public wealth, much of

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[55] The most important of these were The Lieber Code of 1863, the Conference of Brussels of 1874, the Hague Conventions of 1899 and 1907, the Treaty of Versailles 1919, the Washington Conference of 1922, the Roerich Pact of 1935, the League of Nations document presented by Charles de Visscher in October 1936, the Inter-Allied Declaration signed in 1943 and the Nuremberg Charter of 1946.

which was known to be culturally significant. Recovery efforts were seriously hindered by an expanding underground market of displaced objects. While there was already an active network that moved a spectacular quantity and quality of art treasures during the war years, the proliferation of illicit avenues became an even greater problem after the hostilities had ended.[56]

In the decades after WWII certain aspects of the problem, in fact, have become even more pressing. Theft, smuggling, and illicit traffic of cultural objects continue to pose a serious obstacle to protection efforts and hinder restitution. Regrettably, for this reason, the principles initially defined in the post-war period still apply. Today, the concern lies less in wartime pillaging by marauding troops, and more in the continued presence of the illegal market, which evidently thrives on the expanding collector appetite for objects of art not readily available via legitimate avenues. With the dwindling supply of European 'old master' works in recent decades, the focus of the market has shifted from the antiquities of the 'old world' to politically unstable areas of the globe, where the enforcement of regulatory measures are either non-existent, or are significantly easier to bypass.[57] According to March 1999 figures

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56 According to 2001 figures released by the World Jewish Congress the value of art works displaced in the war years has been estimated to be around 10-30 billion US dollars, with about 100,000 pieces of looted art still missing.

57 Collector preference seem to follow the shifts in the availability of materials which often coincide with regional political instability. The disappearance of a supply source or reduced availability of artifacts does not seem to extinguish the interest of collectors, only to refocus it. When tightening legislations and effective enforcement at the source diminishes supply, demand is often refocused on objects more readily available. For example, after the once rich supply of European art almost completely dried up, South American and African archaeological material came into vogue. A recent tragic example is the situation created by the Taliban government in Afganistan, whose destructive cultural policies, motivated by religious extremism are already proving to be devastating to both

from the FBI, illicit trade involving stolen cultural property is now second only to the trade in drugs, amounting to about 4-6 billion US dollars a year.[58] The figures underscore the point that the illicit market is very much alive and that its destructive effects are enormous.

This situation, in part, is perpetuated by a general societal tolerance for stealing and dealing in cultural treasures. Popular attitudes often romanticisize this malfeasance rather than condemn it, which is essentially an endorsement of the practice.[59] Even after years of international involvement and legislative efforts, there is no real social stigma attached to the acquisition, sale of, or profiteering from illicit art deals. The halo of prestige perceived around the work of art is so blinding, that it casts an exonerating aura even on those whose actions involving that object may be morally or criminally liable. Both licit and illicit aspects of the art trade are now among the main instruments used in money laundering operations. The tainted funds initially generated in the drug trade

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the people of the country, and to world cultural heritage. In May 2001 among other destructive acts, the government virtually threw open the doors of the museums in the country in an effort to purge them of all materials deemed heretical by the regime's interpretation of religious doctrine. Deliberate destruction and dispersal was the express goal of the state. Within days of the news leaking, artifacts of immense cultural (and monetary) value from Afganistani museums appeared at the hands of Pakistani middlemen, with western art dealers standing by, ready to purchase. According to the reports filed by international correspondents, Pakistani dealers gave accounts that as soon as the news reached the outside world their services were specifically sought out by art dealers from both Europe and North America. - CBC Newsreport, broadcast in May 30, 2001.

58 FBI report, quoted by the Museum Security Network, 26 July 2001. <http://www.museum-security.org>.

59 For example, films like the Thomas Crown Affair (1999) reinforce this perception in popular culture, portraying contemporary art thieves as stylish, urban, swashbuckling romantic heroes.

are then sanitized by passing through the art trade.[60] Paradoxically, common larceny involving ordinary objects is generally met with far more social ostracism than the violation of universal principles protecting the cultural rights of mankind.

One possible explanation for the persistence of this attitude may be an underlying conceptual obstacle. Sweeping ideas like "the cultural heritage of mankind" can seem to be detached from the ordinary concerns that occupy people daily. They are easily dismissed as having no tangible connection to the reality of mundane life, so they generally excite little, if any, moral indignation in people. While in the right milieu moral suasion can be a far more effective deterrent than the most punitive legal measures, laws and their enforcement are essential, particularly in the absence of strong social pressures.

Indeed, there is a need not just for a set of agreed principles and rules, but also for local political will to enforce the sanctions that will give effect to these rules. As long as the perception persists that sanctions exist only in the books, laws will have no tangible effect on how reality unfolds. Likewise, it is unrealistic to expect that the loss of treasures and knowledge can be halted without the inevitability of prosecution. The ultimate authority of the law lies less in expressing its desired goal, or in spelling out by what process this is to be achieved, and more in what happens to the offender

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[60] While this may be a curious paralell of cleansing paradigms, what actually allows the exploitation of the trade is the regulatory deficiencies built into the various systems that facilitates the movement of art and artifacts (e.g. lack of local legislation, lack of will or means of enforcement, overprotective confidentiality rules involving museum transactions, etc.).

who fails to adhere to its stipulations, and thus becomes subject to its sanctions.

Perhaps the most important step towards the development of independent legal principles for the protection of cultural property was the Universal Declaration of Human Rights[61] which codified the inalienable rights of all "members of the human family."[62] Subsequent jurisprudence has broadened the scope of these fundamental principles in the interpretation and application of the document.[63] A series of concepts with a more focused understanding have been annexed to the ideas expressed in its thirty articles. Likewise, the 'right to culture' notion secured in Article 27 has also been expanded in interpretation to encompass such related concepts as cultural heritage, cultural property, or cultural protection.[64]

Cultural rights and cultural property

In addition to its provisions protecting the rights of the person, the Universal Declaration of Human Rights recognizes culture as an essential component of human life.[65] The very

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61 On December 10, 1948 the General Assembly of the United Nations proclaimed the Universal Declaration of Human Rights.

62 Preamble of the Universal Declaration of Human Rights.

63 The notion of cultural rights was formalized in a more elaborate form in a UN document titled: the International Covenant of Economic, Social and Cultural Rights.

64 The suggestion for the term 'cultural protection law' was proposed by F. G. Fechner. Laws within its scope would encompass the protection of not only objects, but other aspects of traditional cultural life, with cultural property law suggested as a subcategory. International Journal of Cultural Property 7 (1998): 378.

65 In discussing the principles of cultural protection Article 27 is of particular interest, as it guarantees the right to culture and to its products. Article 27(1) of the Universal Declaration of Human Rights states: "Everyone has the right to freely participate in the

principle of human rights is irrelevant outside the precinct of culture, as the concept of individual rights makes sense only with relation to a group, and the term 'culture' implies the existence of a group.[66] Culture is a necessary part of being human. Although contributions to it may be made by individuals, culture is the matrix which forms the basis of human collective life. It encompasses the totality of human activities, all that separates our species from the rest of nature.[67]

"Culture" is a complex concept that has undergone a series of transformations in its usage. It has been adopted by a number of intellectual disciplines to signify often contradictory arguments.[68] Its anthropological usage, denoting a particular way of life adopted by groups of people, is a relatively recent, 19th century development.[69] The most widespread use of the term is connected to the intellectual and artistic activities unique to both human beings in general, and to specific groups of people in particular.[70] Because of its inherent relationship to fundamental features that define group belonging, it has subsequently become a heavily politicized concept, and as such, a useful tool at the hands of polemicists.

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cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits."

66 Studies and documents on Cultural Policies 3: Cultural Rights as Human Rights. UNESCO, 1970: 77.

67 *Ibid.* 10.

68 Raymond Williams: "Culture," Keywords - A Vocabulary of Culture and Society (London: Fontana Press, 1976) 87.

69 It begins with 18-19th century German and English scientific works that traced a linear, evolutionary progress in human societies from the primitive stage of collective savagery, to the ideas of the individual and freedom. *Ibid.* 90.

70 *Ibid.*

Granted that there can be other approaches to understanding culture, in this discussion of cultural property, it is useful to take note of the main ideological goals behind the institutional discourse that underlie cultural property protection formulated within UNESCO's framework. The current understanding of the notion of cultural property has been greatly influenced by a specific interpretation of cultural identity, one that has been located primarily within the precinct of interests embodied by the modern nation state.[71] The impetus behind the very agendas championed by UNESCO has been asserting the privileged status of nation states as sites of cultural identity over those of other agencies.[72] Within the discourse of UNESCO, cultural identity is often understood to be synonymous with national identity. In asserting the right of Hungary to reclaim Vasari's painting as a patrimonial component of its national heritage, the Budapest Museum relied heavily on UNESCO definitions of cultural identity, and on the moral gravity of international conventions that were informed by this understanding of cultural property.

In broad anthropological terms, culture is defined as a "way of life." It serves both to bind a group together by the shared systems its members have designed for living, and to distinguish it from others through the variations in the patterns adopted by each group in organizing their social experience in relation to the experience of

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[71] John Tomlinson, Cultural Imperialism (Baltimore: The Johns Hopkins University Press, 1991) 70.
[72] *Ibid.*

others.[73] To aspire to a strong sense of identity is, it seems, a significant common element of all human societies. In turn, the creation of this group identity is built, to a large extent, on the sum of these particularized arrangements we call "culture."[74]

Another key function of culture is to provide the framework in which life can be secured, maintained, and its continuity ensured. Human beings are not merely beneficiaries of this arrangement, but are also active creators of the material and spiritual values that govern interactions within this framework.[75] Therefore, the cultural rights of people encompasses the power to develop, maintain, make known, or to revive when necessary, their own values.[76] It follows that the guarantee of the right to culture must include the right of the individual to be a direct participant in the creation of the values of his group. This allows people to become responsible for their own situation, as individuals, as citizens, and as human beings.[77] If human society is essential to perpetuate life, then culture, the glue which binds groups together, needs no other rationale for support than the very real, social need for its existence.[78]

The importance of the human creative impulse and the drive to give it material expression have been recognized throughout

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73 Studies and documents on Cultural Policies 3: Cultural Rights as Human Rights. UNESCO, 1970: 25, 89.

74 "Culture . . . Itself a Treasure." Final Report. Ministerial Steering Committee on Culture. January 28, 1998. Government of Canada Documents.

75 Studies and documents on Cultural Policies 3: Cultural Rights as Human Rights. UNESCO (1970): 28.

76 *Ibid.*

77 *Ibid.* 107.

78 "Culture . . . Itself a Treasure." Final Report. Ministerial Steering Committee on Culture. January 28, 1998. Government of Canada Documents.

history, but granting it legal protection for its association with basic human rights is a much more recent concept. If the right to culture is a human right, then a strong case can be made that in order to protect all aspects of culture, it is necessary to extend protection to the products of human creativity.[79] This principle is particularly relevant with respect to objects that play a special role in the life of a culture. However, the physical protection of culturally important objects is not the only issue.

The law views material objects primarily in terms of property and ownership, so issues of property inevitably complicate the question. Such objects belong in a special category of property because of their function, value, and significance. This differentiates them from any other property, and demands a unique treatment apart from ordinary things. While property law has been the basis to determine ownership, it has been inadequate to address the nuances that add to the complexity of cultural property ownership. A technical application of property law may suggest a certain course of action, but that may be contradicted by a moral claim based on ethical considerations. The resulting conflict is directly related to changes in the perception of the work of art.

While its physical form remains unchanged, the work of art undergoes a curious transformation. It changes from how all works

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[79] In proposing the fundamental aims for legal protection F. G. Fechner points out that violations against cultural property and human rights are often simultaneous offenses. He argues that for this reason legislators should make use of already existing human rights laws in developing cultural property measures. Linking future laws of cultural property to human rights is a logical move, because the measures that protect cultural rights are designed to protect the interests of primarily people, not things. "The Fundamental Aims of Cultural Property Law," International Journal of Cultural Property 7 (1998): 378.

of art begin: an idea embodied in material form to material form reinvested with new ideas. The same process takes place when a work of art becomes cultural property. This transformation occurs exclusively in the realm of perception, changing only our understanding and interpretation of the object without effecting its material reality. What gives life and meaning to inanimate objects is what they represent to us, so important shifts in significance should be followed by altering the rules we apply to determine the future of such objects.[80] Indeed, there is a growing recognition that these objects should be dealt with according to a different set of criteria, applying laws which are formulated to be more suitable in addressing the special demands posed by special cases involving special objects.[81]

In asserting the moral right of a state to cultural property, restitution claims have typically hinged on applying the definition of "cultural treasure" to objects in dispute. Matching the definition to such objects has been somewhat problematic in the past for two reasons, which concern the definitions of "culture" and of "cultural property." The anthropological definition of "culture" was based mainly on observations of social arrangements made within stateless

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[80] Glenn D. Lowry, "A Director's Perspective," International Journal of Cultural Property 7 (1998): 445.

[81] In some situations, as is the case with certain aboriginal objects, applying this criteria is not only an issue of principle, but very much a tangible need. Many native artifacts are invested with metaphysical significance and continue to form a living component of the culture which uses and values them in a singular way. Their continued use or re-integration into the spiritual and cultural practices of their people is necessary to perpetuate, or in some cases actually revive the cultural life of a people. Fechner writes: "Cultural property can be the basis for the unification of a community.. . . Thus the removal or destruction of cultural heritage can be a violation of the principles of a state's moral community, which is based on human dignity." "Fundamental Aims of Cultural Property Law," International Journal of Cultural Property 7 (1998): 381.

societies. In many respects the resulting paradigm was inadequate to interpret the more complex dynamics between the various social units of modern, politically centralized nation states.[82] Even more serious was the problem of defining "cultural property," a term which seemed to lack precision in any context. There was no universally accepted interpretation fixing the particular, necessary qualities into a concise definition. This factor has also been one of the main obstacles in the way of implementing international agreements at national levels.[83]

"Cultural property" has been used as a collective term by international conventions, laws, and national legislations for the purposes of protective regulation.[84] The defining quality of such objects is their special value due to their significance as sources of artistic, scientific, or historical information, or to their importance to the cultural heritage of humanity as a whole.[85] Recent definitions are mostly based on the first, most comprehensive attempt articulated in the UNESCO Convention of 1954 signed at The Hague. It defines 'cultural property' as:

> movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are

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82 Studies and documents on Cultural Policies 3: Cultural Rights as Human Rights. UNESCO (1970): 76.

83 This shortcoming is pointed out by S.A. Williams in the context of a working definition based on Article I of The Hague Convention of 1954. :The International and National Protection of Movable Cultural Property (Dobbs Ferry, New York: Oceana Publications 1978): 1.

84 *Ibid.*

85 F.G. Fechner: "The Fundamental Aims of Cultural Property Law," International Journal of Cultural Property 7 (1998): 381.

> of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above;[86]

Added to this list are the buildings such as museums or libraries, whose "main purpose is to preserve or exhibit movable cultural property."[87]

Many cultural objects readily fit the parameters of convention-based definitions as parts of the cultural heritage of the human community. However, a problem arises in specific ownership debates, since individual states still have the final say in what they include in the category of "national treasure."[88] This can be problematic as these decisions are often colored by patriotic sentiments, which tend to be highly subjective and emotively driven. Broadly oriented convention definitions prove to be of little help in debates where the state asserts, as it did in the Vasari case, its "moral" or "cultural right" based on a claim of patrimony.

To determine patrimony is frequently a contentious issue, as works of art, particularly those by European "old masters" often have a long and complicated history of ownership. The most common misconception, even among professionals, is that patrimony is synonymous with the place of manufacture. When approached by the journalist for the Montreal Gazette to comment on the dispute between the two museums, David Carter, director of

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86 Chapter I, Article I, "Definition of Cultural Property," Convention for the Protection of Cultural Property in the Event of Armed Conflict signed at The Hague on 14 May 1954.
87 *Ibid.*
88 F.G. Fechner, "The Fundamental Aims of Cultural Property Law," International Journal of Cultural Property 7 (1998): 380.

the MMFA between 1964 and 1976 said he could not understand why the Budapest museum used patrimony as one of the cornerstones of its claim. To make the point, he questioned why the painting, created in Italy, not by a Hungarian but by an Italian should not be returned to Italy.[89] This would only make sense if one subscribed to the idea that the basis of restitution on patrimonial grounds is the place of manufacture. When one considers its wider implications, this line of reasoning is rather questionable.

Deciding on the patrimony of cultural property is a more complex matter. It is not enough to simply point back to a place of manufacture or even to trace a provenance. What should also be considered is the context in which the work of art acquired its meaning, while taking into account the role history and public reception play in shaping symbolic significance. Cultural value is not inherent in any work of art but is an acquired quality, conferred on important objects by people who integrate them into their cultural lives. They become meaningful because they speak in unique ways to a particular group. As they are able to communicate intangible notions condensed into material form, they become part of the store of symbols and rituals that embody the values, history, and self-concept of a culture. Claims of this nature call for a more holistic approach, with arguments resting less on the technicalities of circumstantial ownership, point of origin, or even magnitude of respect shown by new owners, and more on the location and context where the object acquired its special qualities and meaning.

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[89] C. Arpin, Montreal Gazette, Feb. 28, 1998: A6.

This was the underlying logic of the moral argument supporting the return of the Vasari painting. From the very beginning, the Budapest museum held onto its patrimonial argument, steadfastly maintaining that the Marriage Feast at Cana was part of Hungary's national heritage. Representatives of the BMFA arguing in the post-communist era, emphasized the special status of the painting as part of the cultural patrimony of a people, pointed to its well documented historical relevance, and argued that it ought to be considered in a special category for its unique significance to the nation. The Montreal museum on the other hand, has never recognized the conflict as a patrimonial issue and even denied to consider the painting as a war loss.[90] The MMFA insisted to the end that the case was a straightforward property issue without moral or ethical concerns complicating the question of ownership.

The tone of coverage of the controversy in the Hungarian media was highly emotional, colored with overtones of patriotic pride, and at the end, also a sense of vindication. While the reaction may seem surprisingly strong to this previously little known painting, this case is an example of a larger phenomenon. Repatriation cases are not simply about the cold technicalities of legal title to property. Rather, they are a focus, and sometimes even a catalyst, for the changes in a people's image of their self that accompany great social change. As Hungary moved away from the confinements of its Communist past, aiming towards its future as an

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[90] Mayo Graham to the Montreal Gazette, Canadian Press Newswire, 28 Feb. 1998.

aspiring member of the European Community, the Renaissance masterpieces in the Eszterházy Collection became strong symbols for the cultural and historical links the country strove to re-establish with the West. There was a profound sense that much of its heritage had been taken away from Hungary. The BMFA argued that now it was time to bring this painting home.

Chapter 3

Cultural Diplomacy and Representing a Nation: Art as Ambassador

In the introduction to his book, The Lost Museum, Hector Feliciano articulated to a general audience an important concept regarding the function and value of art within western society.[91] The focus of Feliciano's investigation is Holocaust art losses. His argument for the importance of art objects is anchored in the understanding that beyond their monetary value, such objects historically fulfilled a far more complex social function. Works of art are invested with multiple connotations, apprehended by all those who produce, collect, display, view, sell or steal them. They communicate specific concepts within and between groups of people about identity, social organization, customs, and about moral, cultural or commercial values.

Since Feliciano's book is aimed at a general audience, it assumes that there is such an awareness among a non-specialized audience. He writes about culture and art as the "symbols of the soul and breath of a country."[92] If we discuss stolen art in the context of the psychology of war, considering the objectives of victors and the morale of the vanquished, spoils of war constituted much more than the mere appropriation or redistribution of assets. It became the means to demoralize the conquered, a way to strip

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91 Hector Feliciano, The Lost Museum (New York: HarperCollins, 1995) 5-6.
92 *Ibid.*

away not just the assets and cultural collateral, but the identity and "soul" of individuals, of families and of entire nations.[93] The beneficiaries complicit in the subsequent cultural profiteering, illicit art commerce, and opportunistic sales, became, in a sense, accessories after the fact.

The Marriage Feast at Cana is not a Holocaust loss, and as such, it cannot be discussed in those terms, as its alleged theft during the upheaval of WWII, and its subsequent reappearance and sale in the midst of the frenzied post-war art trade, has nothing to do with Jewish ownership. However, it is linked to the post-WWII market which was built and has subsequently thrived on displaced art. What underscores its cultural importance to its owners, the Hungarian state, is the way it contributed at different times to the history of that country. While in art historical terms the Marriage Feast at Cana is a relatively minor work, in 1989 when Hungary began to re-construct its nationhood as a new democracy, it came to be invested with great symbolic significance because it was part of the original Eszterházy Collection, the body of work that acquired its own status as patriotic collateral at the inception of Hungary as a modern nation state.

Historical irony seems to figure as a dominant element in the adventure-filled provenance of the Marriage Feast at Cana. If there had ever been previous doubts about whether the painting truly has such symbolic value to Hungary, as was claimed by the BMFA, or whether it was genuinely a cultural treasure, on November 1 1999,

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93 *Ibid.*

such doubts were swept away with a single stroke. The fight put up by the BMFA raised the profile of the cause, gaining international attention, bringing the museum, along with the painting, into the very core of the hotly contentious and ethically loaded debate of art repatriation. When we consider this process of repatriation in terms of international politics which determined the strategies of the campaign for its return, the painting came to symbolize all that characterized the cultural, political and diplomatic goals of the new Hungarian government since 1989. Ultimately, it was the return of Vasari's Marriage Feast at Cana on November 1 1999 to Hungary, as a "gesture of goodwill" extended from the Government of Canada, that finally validated its status as a meaningful cultural treasure.

However, it is not only single works of art that can assume such weighty symbolism. While individual pieces, especially those with contested ownerships, receive much of the attention, groups of objects can also be utilized to communicate subtexts which may not at all relate to the literal narratives of the works on display in a collection. The choice of the acquired pieces, the venue of display, and the mode of arrangement can all be used to create visual "text," alluding to social hierarchy, national culture and history, or to signal changes in political power or affiliation. The exhibition of the Eszterházy Collection at the 51st Frankfurt Book Fair in 1999, one of Europe's largest cultural events, provided an opportune time and an ideal venue to broadcast Hungary's new international commitments and to showcase the transformation of the country from an economic and cultural gulag to a democratic European nation.

As the Marriage Feast at Cana illustrates, art is often put to a pragmatic use in the political arena, not only to communicate ideas to its viewers, but also to forge or solidify international alliances. Sidestepping the local interests of Canadian museum politics, the return of the Vasari to Hungary is an excellent example of how a government may use art to further its political goals. In this context, art is no longer a vehicle of ennobling contemplation, but a capital asset imbued with a political "aura."

In fact, the primary function of art held by the nobility and states was hardly ever purely aesthetic, despite the claims and theories of disinterested aesthetes. The Eszterházy family's collecting began in the 17th century, at a time when the professed function of aristocratic cabinet collections was to provide venues for private contemplation of assembled microcosms that served as agents or mediators of knowledge. Notwithstanding this apparent purpose, already there was another rationale, signalled by the fact of ownership, the existence of 'legal title' itself. Symbolically, such collections communicated specific attitudes about cultural values, representing a self-contained model for social organization. The methodology used in the collection placed particular emphasis on property ownership and wealth, and how a human social order was the reflection of a divinely ordained cosmic paradigm. As a microcosm of the world, the private museum displayed a miniature of the greater whole to know, and to own. Therefore, it represented not only the world at large, but also the owner's superiority in material or intellectual matters. As this microcosm was passed down

the family line, it can be seen as a symbol of the family's worldly power.

By the early 19th century the Eszterházy family had gained enormous wealth and became one of the most influential aristocratic families in the Habsburg Empire. Their collections too expanded to the point where the art collection formed a separate entity unto itself. Opening up their massive art holdings to the public in the capital city of the Empire communicated readily understandable ideas about the family to a contemporary audience. Although an apparently magnanimous gesture of *noblesse oblige* on the surface, the collection advertised ideas very similar to the early rationale behind the private cabinet collection, albeit on a much more grand scale: it "spoke" about power, status, and wealth, the prerogatives of a select few, and about culture and art ownership as privileges contingent on the former social accoutrements.[94]

The purchase of the collection in 1870 and the subsequent foundation of the Museum of Fine Arts was not a chance event. The assembly of this national collection, the roots of the BMFA, is unlike many of the museum's European equivalents. Instead of beginning as a royal collection, it came to be one in the context of a national revival, in the wake of the 1848 revolutions sweeping across Europe. Prior to the Compromise of 1867, the internal politics of Hungary were characterized by domestic instability and plagued by ethnic

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94 For a thorough discussion on the subject of aristocratic collections, see: T. D. Kaufmann: "The Collections of the Austrian Habsburgs," The Cultures of Collecting Ed. J. Elsner and R. Cardinal (Cambridge: Harvard University Press, 1994) 138-139. Also see: C. Duncan: "The Art Museum as Ritual," The Art of Art History: A Critical Anthology Ed. D. Preziosi (Oxford, New York: Oxford University Press) 473-485.

conflict. The Revolution of 1848-49 was, in essence unsuccessful, leading to more heavy-handed Habsburg interference through the installation of a series of oppressive imperial agents. The only realistic solution, the Compromise of 1867, restructured the Habsburg Empire. The empire was split into two independent parliamentary systems; Austria and Hungary. The two states were connected by the common ruler, and by the fusion of external affairs, defense, and finance. While the most important affairs of the state remained under shared control, effectively preventing sovereignty, the solution signalled a trend already in motion in other parts of Europe: the birth of the modern nation state based on cultural distinctness, and the shift from an essentially feudal system to a parliamentary model of government.

These events translated into a sense of relative cultural independence in the Hungarian public psyche. The act of Parliament that facilitated the purchase of the Eszterházy art collection aimed to signal the beginning of independence not only in the political, but in the cultural sphere as well. One aspect of promoting national culture was the acquisition of art in order to build a collection for a nation that saw itself as culturally distinct but above all, European in its historical values. Through the purchase of the Eszterházy collection by Parliament in this new political context, and its display at a very different venue, the National Academy of Sciences, a new dimension was added to the content of those objects that advertised Eszterházy family status and aristocratic privilege earlier.[95]

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[95] The National Academy of Sciences is located on the bank of the Danube on the Pest side in the immediate vicinity of the Chain Bridge. The bridge itself, another example of

The idea of a Hungarian national museum was conceived amidst the fervor of 19th century national revival. The new public art museum, the Museum of Fine Arts on Heroes' Square - a national monument commemorating the first settlement of Hungarian tribes in the Carpathian Basin - opened to the general public in 1906, and was intended from its inception to be an agent and mediator of culture and knowledge. The new building was constructed to provide a suitable home for the collection, to create a public space for the contemplation of art as a venue of ennobling education, and to ensure the continuity of culture. The founders expressed their wish that this newfound institution ". . . should provide a link between past and future, that it should preserve the highest traditions of art, and that it should serve as a basis for further growth and as a renewing source of the ennobling knowledge of art."[96]

In the present day, as Hungary is busy again adjusting to a different political and economic system - democracy and market driven capitalism - it is also engaged in reconstructing its cultural identity. In forging new relationships in the context of the reorganized Europe, art and culture continue to be used as political ice-breakers, to reinforce alliances, and to communicate political will and cultural identity.

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patriotic projects and inspired city planning, was constructed in the 1840s as the brainchild of Count István Széchenyi as the first permanent bridge connecting Pest and Buda, linking two the halves, spacially unifying the capital city.

96 K. Garas. "Introduction," Museum of Fine Arts – Budapest Ed. Henry A. LaFrage. (New York: Newsweek; Milan: Arnoldo Mondadori Editore, 1982) 9-15.

Hungary's 1999 participation as featured country in one of the continent's largest cultural and commercial events, the Frankfurt Book Fair, was as much a political declaration as a cultural one. It was the ideal venue to broadcast the message that this new democracy identified in all respects with the rest of Europe. The inception of the Frankfurt Book Fair in 1948 was based on a similar rationale. It originated after WWII to demonstrate Germany's commitment to the cause of change, peace, and renewal. This concept for an event that focussed on cultural reconstruction arose from the rubble of WWII. Immediately following the war years, it was important to demonstrate that Germany had embarked on a "new moral beginning."[97] Along with other reparative efforts, the event strove to regain respect for Germany as a "cultural nation."[98] The stated goal of the Fair organizers was to transform it into a leading cultural event, succeeding by being responsive to progressive social and political developments, and expanding the event's scope into the international arena. The current president of the Book Fair, Peter Weidhaas has remarked on how the organizers "have always fixed (their) gaze on . . . customers, observed their development, [and] analyzed their changing needs."[99] The first organizers took into consideration both the commercial interests of the book industry, and the socio-political climate that influenced the mood of their

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97 Weidhaas, Peter ". . . and the Future of the Frankfurt Book Fair?" Press Information. 11 Feb. 1999. <http://www.frankfurt-book-fair.com/50years/content_weidhaas-e.html>

98 *Ibid.*

99 Press release. "Poland at the Frankfurt Book Fair in the Year 2000." 17 Oct. 1999. <http://www.frankfurt-book-fair.com/bookfair/fbm-e/wir-e/archiv-e/00889/content-presse98-e.html>

audiences as after all, they were the consumers of books, of culture, and ultimately, the consumers of ideas mediated by the book.

The "focal theme" concept was introduced in 1976 in reaction to a shift in audience interest. Weidhaas has also described the event as "a stage on which a guest nation can present the central theme of its own identity to a worldwide audience."[100] In the fall of 1999, Hungary was the first Central European nation to be highlighted in Frankfurt, presenting itself as a newly democratic nation, and as the first country in the Soviet Block that broke down the political boundaries between East and West in the summer of 1989 when it declared its desire for democratic rule and independence from an alien ideology. After ten years, it was all too appropriate to commemorate the anniversary at an international cultural forum dedicated to the dissemination of ideas. The Frankfurt Book Fair was an ideal platform to make an international audience aware of the reforms and to confirm Hungary's continuing commitment to a democratic path. In the context of both Hungary's recent acceptance into the North Atlantic Treaty Organization, and its next major goal, membership in the European Union, projecting the right image at the 1999 Frankfurt Book Fair was a politically astute step.

Given this unique position, Hungary's participation was accompanied by high expectations on several levels. The president of the Fair spoke about political successes and the hope that, after a decade of change, the country's participation "will be an opportunity and an inspiration so that this debate can be a high-

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100 *Ibid.*

profile undertaking, drawing on the example of Hungary."[101] The sheer size of the media presence proved to be an ideal opportunity for Hungary to project an image of itself to the world: as a committed ally and a nation which shares common cultural roots with its Western European neighbours.[102]

At an October 1998 press conference where officials from the Hungarian Ministry of Education and the Arts announced their Frankfurt program, they also spoke about their commitment to culture, to education and to the preservation of the freedom of the mind.[103] They brought this commitment into the context of the 1998 elections held earlier that year, emphasizing that the electorate had chosen again a moderate government, one that included education in its main campaign platform, a government which was committed to usher an educated society into the new millennium. This rhetoric had a familiar ring: it was a contemporary version delivered by 19th century parliamentarians who, responding to a political wind, embarked on an equally ambitious project in 1896 at the foundation of the Budapest Museum of Fine Arts.[104]

The direct link between culture, politics, and social change was re-emphasized in speeches that described the difficulties

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101 P. Weidhaas: "Introduce the Guest of Honour 1999." Press conference. 9 Oct. 1998. <http://www.frankfurt-book-fair.com/pages/presse-ungarn_PW-e.html>

102 About 10,000 accredited media representatives from 60 countries visit each Book Fair, reporting on the various dimensions of both the publishing world, and on the cultural and business links facilitated by the event. P. Weidhaas: ". . . and the Future of the Frankfurt Book Fair?" Press information. 11 Feb. 1999. <http://www.frankfurt-book-fair.com/50years/content_weidhaas-e.html>

103 Gergely Pröhle, Permanent Secretary at the Ministry of Education and the Arts. "Press material on Hungary, Guest of Honour 1999." Press conference, Frankfurt, 9 October 1998. <http://www.frankfurt-book-fair.com/pages/presse-ungarn-e.html>

104 Garas, 15.

Hungarian culture had endured under the oppression of Soviet ideology, which squeezed its allies and their national cultures into the straight jacket of uniformity. Speaking of the ideological direction of their new government, Hungarian officials reiterated the idea that cultural life can not be divorced from the realm of political life: it is a forceful vehicle of change. Likewise, the role of intellectuals as agents of culture should not be underestimated.[105] To illustrate this point, politicians again reminded the world of the historic date of 1956, the Hungarian Revolution. That event encompassed all levels of the social stratum in which instrumental roles were seized by students and intellectuals. The cultural activities of writers and artists figured prominently into the gradual erosion of the official Marxist ideology enforced by the previous government. Ultimately, intellectuals also had a crucial role in the final collapse of the dictatorial regime in 1989. To reiterate the idea of political union forged within the context of cultural production, one official who spoke about the plans under way for the Frankfurt program referred to a recent speech of the prime minister, who quoted one of Hungary's most respected writers, Géza Gárdonyi: "The money spent on books may seem to be money down the drain, . . . however it is the same as sowing a seed."[106] The agricultural allusion tailored for the literary occasion continued: "I am quite

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105 Dr. Arpád Bernáth, managing director of Frankfurt '99 Gemeinnützige GmbH, the company responsible for co-ordinating Hungary's participation in the Frankfurt special events. "Press material on Hungary, Guest of Honour 1999." Press conference, Frankfurt, 9 October 1998. <http://www.frankfurt-book-fair.com/pages/presse-ungarn-e.html>

106 *Ibid.*

sure that everything we see here will soon bring a rich harvest to the nations of Europe."[107]

With openness as policy, the Frankfurt Book Fair is viewed as instrumental in facilitating the flow of ideas across Europe by exposing a growing audience to the intellectual and cultural lives of their neighbours. Since the Frankfurt Book Fair is as much a commercial venue as it is cultural, its promotion of translated works, specifically those of the featured guest nation, disseminate ideas among a much wider audience. Appropriately, the object at the core of the Book Fair, the book - the most readily understood symbol of knowledge - embodies the very concept of the free flow of ideas. The associated cultural activities that accompanied the Fair were also geared to elucidate their direct linkage to the book as a cultural medium.[108]

The concept and presentation strategies of how to showcase Hungary, its publishing industry, and its culture in Germany was preceded by months of intensive public debate. The motto chosen for the country as focal theme was "Hungary without boundaries?" It intended to encapsulate a twofold concept: openness in international relations towards neighboring countries and cultures, and commitment to the concept of openness within. The first, embracing the concept of Europe as a unified community with common goals, a political, cultural, and economic union in which Hungary is striving to secure membership. The second concept

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107 *Ibid.*

108 "Poland at the Frankfurt Book Fair in the Year 2000," Press release, 30 March 1998. <http://www.frankfurt-book-fair.com/bookfair/fbm-e/wir-e/archiv-e/00889/content-presse98-e.html> 17 Oct. 1999.

allows the effects of a global culture into a domestic context that is ready to embrace new styles, forms, and trends in all areas of public life.[109]

To reinforce this connection the Frankfurt event included several visual art exhibits. They aimed to represent not only a wide range of visual production, but also to highlight the artistic values of Hungary throughout the ages. For this exhibition, titled From Raphael to Tiepolo, the organizers chose to represent Hungary with works by the Italian Schools, selected from the high profile Eszterházy Collection, now part of the BMFA's collections.[110] Since the museum itself represents centuries of collecting and thus, the cultural aspirations of the modern European nation, it was only fitting that the art reflecting these aspirations would immediately read as quintessential European.[111] Beyond the obvious ocular pleasure they had to offer, the selected art works underlined in a visually potent way the cultural connections Hungary shared over the centuries with the rest of Europe. The venue of the Book Fair, committed to the promotion of western literary culture and commerce extended the subtext of the exhibition. In addition to the event-motto and the professed goals of the program, the show signalled cultural commitment, reinforcing the ties with the West in an increasingly global arena.

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109 "Focal Theme Hungary at the 51st Frankfurt Book Fair." Press Information, 17 Oct. 1999. <http://www.frankfurt-book-fair.com/bookfair/news-e/presse-e/pressemit99-e/01034/frames.html>.

110 The full exhibition title was Von Raffael bis Tiepolo - Italianische Kunst aus der Sammlung des Fürstenhauses Esterházy, curated by Dr. István Barkóczi.

111 Garas, 11.

Although the Marriage Feast at Cana was not returned in time for the Frankfurt event, it was discreetly included in the exhibition catalogue as part of the collection on display, with its location given as the Montreal Museum of Fine Arts. The painting was never "written off" by its former custodians at the BMFA, and the sudden accretion in its esteem and the vigor of the campaign for its return must be viewed within the context of the long-range goals of this cultural program. Presenting Hungary as the focus in Frankfurt aimed to give "an overview of the most recent cultural and social developments in Hungary together with an insight into its historical place within Europe reaching back over the centuries."[112]

This period indeed represented a unique convergence of anniversaries for the Hungarian state. The year 1999 marked a decade since the major change in state organization, international relations, and in political and public life took place. The same year, the country launched of a series of events aimed to celebrate the millennial anniversary of the first political and cultural alliance between Hungary and Western Europe. The date commemorated was the anniversary of the coronation of the first king, St. Steven I, in 1000 A.D., whose own conversion and subsequent christianization of his subjects won him both the political support, and the blessing of Pope Sylvester II. The bond between the new kingdom of Hungary and the Christian West was sealed with a diplomatic gift of goodwill: a crown presented by the pope's envoys.[113]

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112 "Focal Theme Hungary." Press information. 17 Oct. 1999. <http://www.frankfurt-bookfair.com/bookfair/news-e/presse-e/01191/frames.html>.

113 Although national lore regards the present crown as St. Stephen's, it has been proven to be more of the stuff of legends than historical fact. The crown is a composit of elements

The support shown in 1000 A.D. by the dominant powers of Europe for a burgeoning Hungarian state was part of a broader political scheme.[114] A similar phenomenon set the scene in modern day politics for an "encore" appearance of the crown jewels when they were repatriated from the United States to Hungary on January 5, 1978.[115] Following a series of negotiations between the Hungarian government and the administration of US President Carter, these symbols of European nationhood were returned to their people. The high profile event carried both immense patriotic significance, and had a strongly religious resonance among certain segments of the population.[116]

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dating to somewhat later than 1000. The idea of using precious objects in diplomacy to cement political alliances has been an established practice. Sending the crown in 1000 A.D. was a symbolic act, representing the independence of the new state and recognizing St. Stephen as a sovereign christian monarch. It was a gesture of political recognition and a declaration of support. In the context of medieval cosmology, it signified that political power was divine in origin and that it had to be sanctioned by spiritual authority in a universe whose movement was set by divine order.

114 Emperor Otto I. who fashioned himself as a "new Constantine" figure, and Pope Sylvester I. made up the powerful political duo which initially conceived the ambitious idea of a universal Christian empire, a *Respublica Christiana*, founded on Roman imperial model. In emulating their predecessors, Otto III. and Sylvester II. carried on with the program of the restoration. Securing the territories in central Europe for a Christian alliance was part of this more expansive program. J. Gergely, A Pápaság Története [The History of the Papacy] (Budapest: Kossuth, 1982) 82.

115 In November 1944 the crown jewels were moved by the order of the Hungarian nazi leader, Ferenc Szálasi, and were hidden in a series of underground hideouts. In the spring of 1945 they were moved again, transported to Austria, and buried at a lakeside near Salzburg. The cache was discovered by American troups in July of 1945, and subsequently transported to the United States. It was kept in Fort Knox as a special deposit in the custody of the US State Department until its return in 1978 by the Carter administration.

116 Objects like the coronation jewels have the rare ability to resonate with ideologically polarized segments of the population as they command both secular and religious reverence. For this special capacity such objects are often chosen to serve as historical 'ambassadors' in diplomatic relations. The jewels continued to embody the idea of statehood, but were also regarded as holy relics for their purported connection to the first, canonized king of Hungary. In the secular realm, this primarily diplomatic gesture was the product of a greater trend in global politics as the first signs of thaw in the Cold War began to show.

Post Cold-War Hungary by no means is unique in this usage of historically significant material symbols. The inclusive trend to accept the cultures and their ideas of Central Europe into the larger continental context continued in 2000, when Poland was the featured guest in Frankfurt at the same event which gave Hungary the opportunity to showcase its cultural makeover in 1999. Similar to the slogan chosen by Hungary, Poland's motto for the Book Fair - "A new beginning in Europe" - suggests parallel political and cultural goals. Both Poland and Hungary are hoping for a speedy acceptance into the European Union. Their slogans consciously points to the notion that these countries are ready to rebuild as members of the community of Europe. Likewise, being chosen as Guest of Honour was an implicit promise, a cultural confirmation of a desired alliance, and a display of affinity with dominant ideals and values.

Poland's visual symbol for the event, the bronze door from the Cathedral of Gniezno was to symbolize both national heritage and cultural connection to the rest of Europe. The object itself is iconic of Polish history: Gniezno was the first capital of the country and the site of the initial christianization of Poland. The reliefs of the original bronze door illustrate significant events from Poland's history. A replica exhibited in Frankfurt addressed such notions in reference to its anticipated place in the new Europe. The bronze doors of Gniezno Cathedral or Vasari's Marriage Feast at Cana are examples of how works of art can assume ambassadorial roles in international relations. Whether they operate as cultural relics or diplomatic goodwill gestures, art can be put to very pragmatic uses by governments to convey powerful political messages.

The persistence of the dispute over the ownership of the Vasari puzzled many who had followed the publicity trail since February 1998. After the acceptance of Hungary as a NATO member, this contentious issue remained an awkward point, especially since Hungary was now sitting at the same table with Canada as its military ally. Although the debate became a source of embarrassment for those Canadians who were familiar with its details, the quagmire between the Montreal and Budapest museums never hindered international relations between the two countries. The political forces so instrumental in the swift and creative solution to the dispute, were motivated by much higher calibre issues than those directly associated with the ownership of the Vasari painting. An object so highly charged with emotional content had a much greater potential use given the right circumstances.

In negotiating the agenda for the Hungarian diplomatic visit in October 1999, the issue of the unsettled Vasari ownership was brought up again by Hungarian ministry officials. While the Canadian government had avoided involvement altogether in the Vasari debate before this point, it became clear that returning the Vasari in this context had potentially great political benefits. The Prime Minister's office stepped into the debate at this point, and brokered a deal which maximized the political benefits of a long awaited solution. The "goodwill gesture" of the Canadian government reaffirmed the economic, political, and military ties between the two nations.

The real political stakes were indeed high. The stated purpose of the visit by the Hungarian Prime Minister, Victor Orbán was to

thank Canada's early and firm support of Hungary's application for NATO membership.[117] However, beyond the diplomatic niceties, Orbán expressed a controversial stance regarding nuclear weapons. He indicated his willingness to consider allowing the deployment of NATO nuclear weapons from Hungary should a crisis arise in the future.[118]

The issue of nuclear weapons remains a frequently queried one. It is often debated whether NATO still need them in its arsenal. Small, newly independent nations such as Hungary, Poland and the Czech Republic that skirt the border of the political divide of what used to be the Soviet multinational conglomerate perhaps need a more increased sense of security than other European nations. For protection, they seek to align themselves with the military powerhouse of Europe.

While in the global scheme of power relations Hungary may not be militarily significant, strategically it can figure as an important factor due to its location. To fulfill its role as part of a technologically advanced military alliance, the current Hungarian government is also in the process of modernizing its army, updating its arsenal, and replacing old equipment. Given the international context of this military alliance, the priority, as decided according to an apparently pragmatic logic, was to maintain good relations with a fellow NATO ally in a strategically important location. The return of the painting not only resolved an already embarrassing

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117 Sallot, Jeff, "Activist Past Lives on in Hungary's PM," Globe and Mail 29 October 1999:A9.

118 "A Kanadaiak Budapestet Fejlesztenék.," Magyar Hírlap 2 Nov. 1999: 1, 3.

situation, but was an ideal opportunity to further improve political relations.

While the immediate issues of ownership has been settled, the return of the Vasari to Budapest may not mean that repercussions of the debate solved unexpectedly by Canadian federal interference will no longer be felt. Although it was a creative solution to a contentious situation, the return of the painting through diplomatic channels to the Hungarian government delegation was a highly unusual move. As the National Gallery acted as the mediator in the transaction, the process did not directly involve the MMFA, and the institution was under no obligation to disclose any potentially incriminating information pertaining to the circumstances of the 1963 acquisition.

It may seem that with this solution the MMFA has saved face, but its release of the painting under these circumstances points to the museum's lack of ethics in the original acquisition of the work. In light of common protocol practices and typical diplomatic exchanges with heads of state, the return of the Vasari in itself can be construed as an apparent indictment of the MMFA. It is not the practice of the Canadian government to express its goodwill towards visiting heads of state or foreign dignitaries by presenting them with works of art from Canadian museums deaccessioned in order to become diplomatic gifts. While protocol does require the presentation of symbolic gifts as tokens of friendship, it generally calls for objects with regional significance culturally unique to the presenter, but without significant monetary value. Given the highly

unusual nature of this Canadian "goodwill gesture," this final transaction may be construed as an indictment of the MMFA.

In financial terms, the continued refusal of the MMFA to repatriate the Vasari and the solution imposed on it by federal authorities may turn out to cost the museum much more in lost potential revenue than the estimated value of the painting. To reciprocate the "goodwill gesture" extended by the Government of Canada, the Hungarian museum proposed to return the favour by sending an exhibition to the National Gallery of Canada of selected works from the BMFA's extensive Spanish collection, or the Eszterházy Collection of Italian works assembled for the Frankfurt event. As major museums with important collections are reluctant to part even temporarily with rare works, exhibitions featuring primarily old-masters' paintings are increasingly difficult to mount. While such shows present an enormous undertaking and logistical challenge, organizing museums exploit such blockbuster exhibits for their revenue potential. According to István Barkóczi, curator at the BMFA, had the MMFA been initially willing to negotiate a return, the Budapest museum would have been more than ready to reciprocate the gesture in kind. The Montreal museum would have had the opportunity to host a rare, world class exhibit with significant financial revenues that typically accompany such blockbuster events. Instead, and perhaps appropriately, the beneficiary of the BMFA's gratitude, it seems, may be the National Gallery of Canada.

Chapter 4

Repatriation

The idea of "home," of belonging to one place before all others, is steeped in nostalgia and romanticism. It is a concept deeply entwined with threads of melancholic longing, yet avoiding this idea would render all pragmatic discussions on repatriation meaningless. Therefore, this chapter will outline both the basic principle of repatriation, and consider the specific, moral-right arguments asserted by the Budapest Museum of Fine Arts in its campaign for the restitution of Vasari's Marriage Feast at Cana. It also reviews some of the Canadian legislative measures instituted since the 1970s to address the problem of illegal transnational traffic in cultural property.

Before a displaced cultural treasure is repatriated, its true patrimony, its 'home,' has to be determined. Deciding where that place is may be a perplexing undertaking, since debates about patrimony are often informed by such emotionally charged and hard to quantify concepts as national identity, patriotic pride, cultural heritage or historical justice. Repatriation claims are further complicated by the fact that often both the contested object, and the notions used to argue for a single place as its "home" are laden with a host of intangible, and largely subjective associations.

As alterations in historical circumstances are often permanent, it would be an impossible task to restore social conditions to their

original state. Since the events of the past can not be undone, it would be an equally unrealistic and absurd aim to return all works of art to their points of origin. Nonetheless, there are special cases where a moral conflict demands a recompense solution. However, it can be argued that while legal provisions negotiated in recent decades signal a substantial progress towards a restorative trend, the efforts to provide a framework for the future is less meaningful without the accompanying social will to resolve still lingering legacies of past injustices. Since new laws typically are not retroactive, another aim in this context has been the creation of alternate routes outside legal venues, such as diplomatic avenues, where satisfactory solutions can still be found through non-litigious processes.

Legal remedies for injurious acts have been addressed through the concept of restitution. The term in the context of war losses means compensating for a loss by restoring as much as possible a status quo, which would have continued had the original violation not occurred.[119] In cases involving wrongfully removed or otherwise displaced works in time of war may mean the actual return of the object to its original owners or their legal heirs.

Repatriation in the context of museum practice has been defined as,

> the return of cultural property from a museum or a private collection to its place of origin, or to a place, country, or group for which it is considered to have particular significance and from which it has been removed. It is now commonly

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119 S. A. Williams: The International and National Protection of Movable Cultural Property-A Comparative Study (Dobbs Ferry, New York: Oceana Publications 1978) 12.

> accepted in museum codes of ethical conduct and in a growing number of national jurisdictions, that recently looted or illegally acquired or exported cultural property should be repatriated.[120]

While important cultural objects have been recognized as parts of the "cultural heritage of all mankind," and thus fall under general UN protection, this universal category often conflicts with specific national interests that come to the fore in patrimonial claims. This simultaneous concern is addressed by the acknowledgement that individual states must have privileged access to, and the right to protect that part of the global heritage which comprises their own cultural legacy.[121] Underlying the development of repatriation is the recognition that certain objects belong by right to a culture or a people, and that this moral principle should take precedence over any other claim, including that of a technically valid legal title.[122]

While this idea is rapidly gaining momentum, perhaps due, in part, to its appeal to an instinctive sense of justice, responses from museum professionals have not been uniformly positive. Many critics of repatriation have been intensely apprehensive about any policy which would leave an opening to mount a challenge to a museum's property rights, even in special cases. These opponents see a dangerous trend in allowing the review of museum collections

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120 S. Sullivan: "Repatriation." Conservation. 14.3 (1999): 18.

121 S. A. Williams: The International and National Protection of Movable Cultural Property-A Comparative Study (Dobbs Ferry, New York: Oceana Publications 1978) VII.

122 A. C. Danto, "Striking Back at the Empire," rev. of The Return of Cultural Treasures, by Jeanette Greenfield, The Times Literary Supplement 16-22 March 1990: 286. However appealing such arguments may be, their weakness lies in the assumption that each distinct group or a "people" is a culturally homogenous unit in itself.

and their past display practices on the basis of a retroactive application of newly evolving contemporary ethics.

Ideologically these critics cling to the grand narrative of the museum as a secular temple dedicated to human creativity and genius.[123] In their opinion, surrendering random components of their collections on demand would not only compromise the coherence of the individual "histories" laid out within the museum's walls, but would also destabilize the ideological basis of the institution itself. Museum curators tend to have a reverential attitude towards the works of art in their collections and understandably so, as they are typically entrusted with objects which could never be replaced. There is a general agreement that the role of the curator should be to interpret and to preserve works of art, but there is no agreement on the necessity to adhere to a particular interpretation.

When these contextual concerns are translated into practical terms, curatorial prognoses often describe a hypothetical scenario, in which giving any priority to national interests over that of the institution would be a capitulation to political agendas, and would leave museum collections vulnerable to indiscriminate dismantling by the state. This would signal the beginning of the end for museums worldwide, pointing to the eventual demise of even the greatest collections.

One such cautioning voice was of the director of the British Museum, David Wilson, who warned in 1985, that

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123 S. Sullivan quoting David Wilson. "Repatriation," Conservation 14.3 (1999): 18.

> . . . if once a group of objects were returned, then there would be a continual and increasing demand for return from all over the world: each one is a 'special' case.. . . This is a bandwagon which could result in wholesale cultural destruction for the sake of narrow nationalism. Such demands can only lead to cultural isolationism and mutual misunderstanding.[124]

In retrospect, such alarmist warnings of a dangerous domino effect proved to be highly overrated. Statements of this kind are sidestepping the fact that repatriation was never conceived to be the indiscriminate, "wholesale" dispersal of everything based on capricious claims, but a means of redress for cases where restitution of historical injustice involving cultural material was still possible in the most direct way.

Some institutions, such as the British Museum, emphasize the universal aspects of the museum's purpose, as this strategy is the least likely to upset the established proprietary status quo. Other institutions, such as the BMFA, that also care for state collections but have suffered extensive losses, tend to stress the museum's custodial role as the manager of the cultural assets of a nation state. Indeed, it is in the best interest of the state to retain control over the protection of its cultural materials, as it is a useful mechanism to maintain its system of symbols.[125] National collections of art are

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124 *Ibid.* The greatest stakeholders in this debate are usually also the most vocal opponents of restitution. Many, like Wilson, are custodians of high profile institutions with massive ethnographic or antiquities collections. Due to their staunchly retentionist constitutions, and the size and type of their collections, these institutions are the most likely, and most visible targets of repatriation claims. Many of these, such as the British Museum, amassed their immense collections primarily during colonial rule, a period which is one of the focal points of current historical criticism.

125 Indeed, the diffusion of unifying values and common symbols throughout society has been an historically important feature of the development of the nation state. Studies and documents on Cultural Policies 3: Cultural Rights as Human Rights, UNESCO 1970: 76.

among the instruments to this end. The institution of the museum and the objects contained within become the focus of cultural and national pride, although it should be pointed out here, that to be attentive beholders of objects behind glass may not exactly describe "participation" in a culture. Rather, it underscores the peculiarity of a social arrangement in which "participating" entails - at least in part - the static display of aesthetic symbols enshrined in the theatre of beauty: the art museum.[126]

When the BMFA revived its claim for the return of the Marriage Feast at Cana in 1998 they argued for its repatriation on three main points: the status of the Vasari as cultural property, the unethical conduct of the MMFA in purchasing a work of art which most likely arrived to Canada as contraband, and the scholarly importance of restoring the completeness of the BMFA's collection. The first argument asserted that as cultural property, the Vasari was part of the nation's patrimony. This reasoning relied on applying the United Nation's definition of cultural property to the painting, or more precisely, to its last provenancial context, the Eszterházy Collection. The BMFA insisted that this collection had its own, special national "narrative," and as one of its important components, the Vasari too was embued with associations more unique and meaningful in Hungary, than it could possibly be anywhere else. The basis of this argument was the premise that this singular "national narrative" was created in Hungary, and therefore, it is to there that the painting should be returned.

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126 A. C. Danto, "Striking Back at the Empire," rev. of The Return of Cultural Treasures, by Jeanette Greenfield, The Times Literary Supplement 16-22 March 1990: 286.

As most works of art, especially the paintings of "old masters," the Marriage Feast at Cana was incorporated over time into a number of contexts, each with its own "narrative" that eventually gave the painting its cumulative significance. Each subsequent shift in its use has built on the status and meaning acquired in the previous context. While the exterior representation of the Vasari remained basically unchanged over the centuries, its symbolic significance has undergone a series of shifts.

The process of transformation, from material expression of an idea to cultural property - referred to in Chapter 2 - can be traced along a continuum in the history of the Vasari as well. It began immediately after the Marriage Feast at Cana has entered the twin worlds of perception and substance as paint on wood, depicting in a single frame the artist's conception of a miraculous event. The painting was both physical object and conceptual paradigm, a painted surface cum transparent vehicle conveying transcendent concepts. Created for the purpose of a religious display and as a visual aid in worship, focus was not intended to be on the painting itself, but on its function as the mediator in sacred practice.

Beyond serving a spiritual purpose, the large scale versions of the Marriage Feast at Cana and its two counterparts fulfilled an ideological function as well. As commissions for the refectory, they depicted food miracles from both the Old and the New Testaments, as well as from the tradition of the Benedictine Order. The paintings visually tied together the local, physical reality of the Benedictine monastery with the greater tradition of Catholic Christianity,

situating the Order within the grand history and power structure of the Universal Church.

When the Marriage Feast at Cana was acquired by the Eszterházy family at the end of the 18th century, it again was incorporated into a new ideological narrative, crafted by generations of the same aristocratic family. As part of the Eszterházys' art collection this new context altered its social purpose, as well as shifted its meaning from religious to secular, from depiction of sacred narrative to painted collectable object. Another important aspect of this shift was the Renaissance's attention to the role of the artist as the individual mediator of ideas, whose capacity of genius, skill, and creative efforts were all a reflection of the same Divine Mind that brought about the miracles of genesis, of artistic creation, and of the wondrous multiplications of food.

As part of the Eszterházy Collection, the painting came to signify social hierarchy, aristocratic privilege, and stand as proof of the discriminating taste and financial status of its owner. This status through acquisition was built, in part, on prestige previously established in the context of the Catholic Church. In the case of the Vasari, by purchasing a small version of a larger painting already venerated in religious practice elsewhere, the transaction transferred a fraction of that prestige and reverence onto the collector, whose privilege itself was seen as a natural feature of the divinely ordered cosmos.

When acquired by the Hungarian State in 1870, at a historically important point, the transfer of ownership from the

Eszterházy family to the Hungarian state curiously paralleled the transfer of power from a feudal aristocracy to an evolving parliamentary system. The role of the collector who derived prestige from the ownership of property was taken over by the state, a move that changed the context of display, and reversed the process in which public access has contributed to the collection's esteem. As private aristocratic property, its exclusivity and controlled access enhanced the prestige of the art collection. As state property, its public viewing was encouraged at both the National Academy of Science, and later, in its newly built permanent home, the Museum of Fine Arts. Its display in a national context and ready public access have morphed the collection not only into a cultural spectacle, but also into a source of national pride.

In both the contexts of 19th century nation building and of newly forged 21st century European alliances, the institution of the Budapest Museum of Fine Arts and its art treasures were cast, then re-cast as agents of cultural sophistication, signalling national independence while affirming the country's intellectual and cultural links with Europe.

The continued refusal of the MMFA to negotiate a formal repatriation with the Hungarian museum opened some old wounds on injured national and institutional pride, which were on the mend after the 1989 shift to a democratically elected government in Hungary. Beyond the the sense of material loss over a valuable work of art, Montreal's refusal was also a poignant reminder of frustrated international recognition which both the Hungarian government and the Budapest museum strove to restore. The tone of a brief, but

telling comment made to the reporter of the Montreal Gazette by the BMFA's curator, István Barkóczi, revealed a sense of injury perhaps to both institutional and national pride. His interpretation of the consistently negative response from Montreal was that "the attitude in Canada was 'let's not take these people too seriously.' And as it turns out, the feeling persists today."[127] The continued refusal of the MMFA was interpreted in Budapest as a derogatory gesture: the BMFA saw itself discounted as an institution of no consequence that could be easily cheated out of its treasures.

In arguing for the Vasari's repatriation as a moral obligation, the second contention of the Budapest museum challenged the ethical validity of the 1963 Montreal acquisition of the Marriage Feast at Cana. The BMFA cited the illegal removal of the painting from Hungary, questioned the "good faith" conduct of the MMFA in the purchase of the picture, and criticized the manner in which the Montreal museum carried out the investigation of the painting's provenance.

By collating all museum personnel accounts, available documentation, the historical realities and laws in force at the time in Hungary, the painting indeed did reach Canada under suspect circumstances. Its removal from Hungary without a permit violated a Hungarian customary law introduced in 1949, that prohibited the unauthorized export of cultural objects covered under its statutes.[128] As there was no permit ever produced by either the

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127 C. Arpin, "Museum Fights for its Art," Montreal Gazette 28 Feb. 1998: A6.

128 This law protected both the works of non-living artists and of living artists, if the works were executed before 1900. These were cited in a broader category under the term "objects of cultural value" that also included "old printed matter" (i.e any book, journal,

MMFA, or by the Hungarian citizen whose daughter sold the Vasari to the museum, the painting could only have left the country illegally. The BMFA argued that as the painting evidently was smuggled out of Hungary, it was, by definition, contraband merchandise, and further, that a reasonable professional exercising due diligence, whose position demanded an up to date familiarity with laws regulating the movement of art, could not have been ignorant of this fact.

An important legal factor used by the Montreal museum to support its claim of rightful ownership was their statement that the museum purchased the Vasari in "good faith."[129] This argument was also addressed by the Budapest museum and branded "dubious" by its legal council.[130] As representatives of the BMFA repeatedly said to the media, the circumstantial details of the acquisition cast a doubt on the assertion that the Montreal museum in fact acted in "good faith." The Budapest museum argued that unexplained questions, such as how a 16th century "old master" painting ended up in Canada with virtually no conclusive documentation, could not

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newspaper, periodical, map engraving or manuscript). Special permits had to be secured from the Ministry of Culture for each individual piece to be exported. In 1963 the official body delegated with granting authorization changed from the Ministry of Culture to the Budapest Museum of Fine Arts, but the principle has remained unchanged: no export of works covered by the statutes without the ministry's authorization. Decree-Law No.9 of 1963 expanded the scope of already existing legal protection of cultural artifacts, as well as introduced provisions with respect to the export of objects categorized as "museum objects", "protected objects", and "protected collections." For a summary, see: The Protection of Movable Cultural Property II: Compendium of Legislative Texts. Paris: UNESCO, 1984.

129 Arpin citing a letter dated September 18, 1997 from the Montreal law firm of Stikeman, Elliott representing the MMFA, addressed to Andrea Francoeur-Mécs, the lawyer representing the BMFA. "Museum Fights for Its Art," Montreal Gazette 28 Feb. 1998: A6.

130 *Ibid.* Arpin quoting Francoeur-Mécs.

have possibly satisfied a board informed by an expert curatorial adviser, if it was determined, as was claimed, to carry out a thorough provenance investigation, and was genuinely interested in a "good faith" negotiation. Due to the lack of legislative measures in Canada in 1963, the purchase of the Vasari may not have been technically illegal, but it was, as emphasized by the BMFA, ethically suspect.

From the late 1970s, the onus to respond in a morally meaningful fashion to the ownership issues concerning the painting became even more pressing. At that point Canada has already enacted its own laws protecting cultural property,[131] and professional guidelines that aimed to standardize acquisition procedures at museums across the world were in place as well.[132] The MMFA was no longer operating in an environment that lacked a defined ethical compass or a legislated framework guiding institutional conduct.

Within this line of reasoning, the MMFA was morally obligated to repatriate the painting after it was accurately identified and the circumstances of its disappearance came to light. This argument of the BMFA was bolstered by the fact that both professional and judicial bodies have since instituted measures which today would not only override the original transaction, but condemn the ethical conduct of the MMFA. As neither protection laws can be applied retroactively nor new guidelines be made compulsory, their use in

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131 The Cultural Property Export and Import Act, 6 Sept. 1977. Government of Canada Documents.

132 ICOM Code of Professional Ethics. <http://www.icom.org/ethics.html>.

this case ultimately was limited to adding "only" their moral gravity to the Hungarian museum's argument.

The third main point at the basis of the Hungarian case for repatriation was focused less on advocating issues of national relevance, and more on emphasizing a broader scholarly benefit to be gained from restoring the painting to the context of its original assemblage. Learned collectors of the eighteenth century believed that knowledge was best organized into patterns with thematic unity and structural completeness.[133] The works of art in the Eszterházy Collection were chosen and assembled according to a model resembling a form of taxonomy, tailored to art: a "diagram" that documented with representative samples the development of Italian painting through the centuries, beginning with the Middle Ages. Thematically the collection was arranged following a continuous, evolutionary line covering all major Italian schools and artists. Essential to this structure were the works of the Florentine Mannerists, including Giorgio Vasari. Even a relatively minor work like the Marriage Feast at Cana is important in this overall context. Scholars may study the particulars of an individual work or compare several works with one another, but an even more important source of historical information can be the very structure of a collection. When viewed in its entirety, specific patterns may emerge from its

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133 The methodology introduced during this period to the categorization and the corresponding displays of other disciplines followed a similar logic. For instance, Binomeal Nomenclature is used in the scientific cataloguing of living things is still in wide use today. Carolus Linnaeus (1707-1778), often called the "father of taxonomy," created a simplified version of the system of classification (binomial nomenclature) that is still in use today. His ideas on classification have influenced generations of biologists during and after his own lifetime, even those opposed to the philosophical and theological roots of his work.

organization, revealing the theoretical logic applied to its display. Collections can also be telling of the motives, desires and a particular program the collector have had in mind.

Before its return to Budapest, Dr. Barkóczi of the BMFA referred to the Vasari as a valuable "missing link" in an otherwise comprehensive Florentine collection.[134] The Marriage Feast at Cana was the only painting by Vasari in the BMFA's collection, and as there are very few easel paintings by the artist outside Italy, the rarity of the work amplified its importance to the narrative of Italian painting as it was constructed within the Eszterházy legacy. As the painting was most likely intended as a preparatory sketch, it was also appreciated in Budapest for what it could reveal about the working methods of the painter, and the process of developing an original idea to a finished composition.

Adding to the rarity and technical significance of the work was the fact that Vasari was not only an artist, but also an art historian. As a collector of biographies, his literary efforts, documenting the lives of notable artists and cataloging their works in his highly influential Lives of the Artists, follow the same sequential model also imposed on the organization of later art collections.

The Budapest museum emphasized that restoring the Marriage Feast at Cana to its national context would further enhance the role of both the painting, and the Eszterházy Collection as potential sources of knowledge, and as subjects of study for future scholarship.[135] In

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134 I. Barkóczi: Personal Interview. 10 July 1998.

135 Underpinning this argument was the preamble of the UNESCO Convention of 1970 which assumes, that culturally significant objects are a source of knowledge, and that they can facilitate the sharing of this knowledge between institutions and people: ". . . the

contrast, it would have been difficult to argue the same while the painting was in Montreal considering its usage at the MMFA. After the broadcasting of the CTV report in February 1998, the Marriage Feast at Cana was brought out of storage and was hung in the MMFA's J.W. McConnell Gallery. The exhibit was a mixed arrangement of objects dating from the 15-16th centuries, consisting of a half dozen examples of applied art, a small bronze sculpture, and some minor works by the painters El Greco, Tintoretto and Andrea Mantegna.

Admittedly older museums, like the BMFA, are at an advantage over their junior counterparts in having had more immediate access to prestigious art works that history has put more readily within their reach. As their collections were built over time, it has been argued, that particular groupings of cultural objects may have a greater historical value as a whole, than the sum of their individual components would have on their own.[136] Therefore, it may be advantageous to preserve specific assemblages of objects as complete units. Renaissance art collections and curiosity cabinets are often cited as examples in this context, as their cultural value tend to lie in the unique combination of their pieces.[137] In turn, those individual components are more meaningful as part of the

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interchange of cultural property among nations for scinetific, cultural and educational purposes increases the knowledge of the civilization of Man, enriches the cultural life of all peoples . . ." UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import Export and Transfer of Ownership of Cultural Property, Adopted by the General Conference at its Sixteenth Session, Paris, 14 November 1970.

136 For a more detailed discussion of the preservation of various types of original contexts see Fechner, "The Fundamental Aims of Cultural Property Law," International Journal of cultural Property 7 (1998): 379.

137 *Ibid.*

original group, than they would be outside of its context. This rationale was an important underpinning of the "missing link" argument put forth by the BMFA's curator. It also drew on the notional support of a number of landmark international documents that gave additional moral weight to the Hungarian claim.[138]

The importance of preserving particular, original combinations of cultural objects have been recognized and supported by international agreements in recent decades. They extend protection to multi-component works of art, and generally favor keeping cultural families of objects together.[139] The impetus behind such protective efforts is the recognition, that specific groups of objects can form comprehensive units, whose meaning would be irretrievably lost if their original configurations were allowed to be altered or disassembled.

What has been an international concern came to be recognized, in time, by Canadian law as well. The concern after the end of WWII was not one of pillaging armies that was hauling away the precious belongings and cultural wealth of conquered peoples, but rather the temptation that comes with the prestige commanded by art. Instead of violent plunder, the greatest threat to cultural

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138 The most influential in this respect have been The Hague Convention of 1954 , the UNESCO Convention of 1970, and most recently, the UNIDROIT Convention of 1995. None of these, however, could give legal support to the BMFA's case. The reasons differ from document to document. The Hague Convention of 1954 does not address the problem of the illegal traffic of cultural property at peace-time, so the Vasari claim simply fell outside its scope. The 1970 UNESCO Convention specifically dealt with illicit export and import, and while it was acceded by both Canada and Hungary, it could not be applied retroactively. The UNIDROIT Convention of 1995 is intended to facilitate the restitution of cultural objects, but to date has not been ratified by Canada, and is also a non-retroactive agreement. Hungary ratified the UNIDROIT agreement on May 8, 1998.

139 All three conventions above make specific references to culturally significant assemblages of objects. (Article I/a and UNIDROIT in Article 2 and the Annex.)

treasures today is the illegal trade in art. With respect to the BMFA's claim to the Vasari, the most unfortunate circumstance in 1963 was the lack of domestic legal measures in Canada that would have prohibited both the import, and the sale of the painting in this country. Also, at the time Canada had no international obligations to Hungary that would have compelled it to uphold Hungarian customary laws. Subsequent Canadian measures, however, may have had a decisive impact on negotiations involving the repatriation of cultural property, including the Marriage Feast at Cana. Therefore, it may be worthwhile to consider briefly the 1977 Cultural Property Export and Import Act as today, this law would have significantly changed the federal approach to the Vasari claim by providing a legal foundation for governmental intervention.

The 1977 Cultural Property Export and Import Act aimed to address both the issue of protection in the domestic sphere, by regulating the removal of cultural property from Canada, and to help curtail the international movement of illicitly traded or stolen objects into the country.[140] In drafting the Act lawmakers relied much on the concepts of the UNESCO Convention of 1970. It was hoped that Canada would be able to enlist the help of other states in recovering items illegally exported to their territory, and in turn, would also assist in the recovery of theirs found on Canadian soil.

The Cultural Property Export and Import Act, labelled "Bill C-33" was tabled in the House of Commons in the Fall of 1974, was given royal assent on June 19th, 1975, and came into force on

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[140] See S.A. Williams, 117-118.

September 6, 1977, after receiving consent from all provincial governments, the House of Commons and the Senate. Royal assent has also enabled the Canadian Parliament to subsequently ratify the 1970 UNESCO Convention, which it signed the following year, on June 28, 1978.[141] By signing the UNESCO convention of 1970 Canada entered a multilateral international agreement. As both Hungary and Canada were signatories to the Convention, as reciprocating states[142] they are both under obligation to recognize the laws of each other with respect to the export, import and sale of cultural property,[143] and facilitate, when necessary, recovery efforts.[144] Once the Act came into force, it became illegal to bring into Canada any cultural property which was illegally removed from a reciprocating state. The act considers both illegal export and import as equally serious offenses.[145] It also places greater responsibility on museums to ensure that their acquisition policies and their actual procedures are ethical.[146]

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141 *Ibid.* 158. See footnote 359 in S.A. Williams.

142 A "reciprocating state" means a foreign state that is a party to a cultural property agreement. "The Act states that a 'cultural property agreement,' in regards to a foreign State, means an agreement between Canada and that State or a multilateral agreement relating to the prevention of the illicit international traffic in cultural property to which Canada and the foreign state are both parties. Act 31 (1), The Cultural Property Export and Import Act, Government of Canada Documents.

143 *Ibid.* Cultural property in this respect is defined as "any object that is specifically designated by that State [making the claim] as being importance for archeology, prehistory, history, literature, art or science.

144 The Act also provides for procedures when a foreign state claims, as Hungary did in the Vasari case, that its illegally exported cultural property is in Canada. Once a written formal request is made, the Attorney General of Canada can initiate court action for the recovery (Article 31/3).

145 Under the Act the penalties for violations range from $5000 - $25,000 fine or imprisonment of up five years, or both.

146 Under the Act 39 (1) every person who contravenes any of the provisions of sections 34 to 38 is guilty of the offense and is liable . . ." Appendix IV and Section 40 deal with offending institutions where the individuals involved in the decision are to be held

To be fair, this law also provides protection to purchasers who are, as the MMFA maintained it was in its acquiring the Vasari, *bona fide* buyers, who bought the work of art in good faith,[147] unaware at the time of purchase its illegal origin.[148] Canada's obligations would have been more explicit, had the Act been in place in 1963. Beginning in 1964 the BMFA's representatives have tried various alternatives in pursuing their claim, beginning at the MMFA. After their frustration with the Montreal museum's officials and its unresponsive board, they attempted to use diplomatic channels, enlisting the help of the Hungarian Consulate in Montreal, but without immediate success. The non-involvement of Canadian officials was due, in part, to matters of jurisdiction, in both the political sphere, and in terms of museum governance. Ultimately, it was the legislative vacuum with respect to cultural property, that allowed the case to remain pending for over three decades.

As legislating the protection of cultural property is a federal matter, representatives of the Budapest museum attempted to use diplomatic channels after their attempts negotiating the Vasari's repatriation failed with the MMFA. The most ready justification to avoid involvement was a constitutional issue: under the Canadian Constitution of 1867 legislating property ownership falls under

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responsible, and should not be able to hide behind their institution. "Any officer, director, or agent of the corporation who directed, authorized, assented to, acquiesced in, or participated in the commission of the offence, is a party to and guilty of the offence. Any such person is liable . . . to the punishment provided for the offense."

147 C. Arpin, "Museum Fights for its art - MMFA Bought Painting in 'Good Faith,'" Montreal Gazette 28 Feb. 1998: A6.

148 Article 31 (6). The Cultural Property Export and Import Act, Government of Canada Documents.

provincial jurisdiction.[149] The reluctance of lower level federal officials to get involved in an apparently provincial matter is perhaps understandable, given the conspicuous time when the Vasari case was revived for the last time (the Quebec referendum on separation from Canada), and the tacit understanding that domestic politics involving Quebec is a hazardous territory.

Another delicate issue in negotiating the jurisdictional quagmire of Canadian politics was preventing the appearance of all impropriety on part of the BMFA. As the Budapest museum is a state-owned institution under the authority of the Hungarian Ministry of Culture, the ministry's initiating formal negotiations with the Quebec government on the brink of a referendum would have been a diplomatic *faux pas* seriously damaging to the BMFA's case.

When approached by the reporter of the Montreal Gazette, a spokesman for the office of Quebec's Minister of Culture, Louise Beaudoin, said that while museums are under the ministry's jurisdiction, government involvement is limited to a case-by-case basis, as museums are primarily self-governing, independent bodies.[150] This would be a reasonable explanation, were it not for the fact that the main source of funding for the Montreal Museum of Fine Arts is the Government of Quebec. In 1997 the museum received 4 million dollars in public funds.[151] The comment is revealing about the additional intricacies of the balancing act

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149 The Constitution Act, 1867. Department of Justice, Canada (1982): 92.13

150 C. Arpin, "Museum Fights for its art - MMFA Bought Painting in 'Good Faith,'" Montreal Gazette 28 Feb. 1998: A6.

151 Annual report, Montreal Museum of Fine Arts, 1997.

between government input and museum governance, further complicated by multi-source funding.

Today, the Cultural Property Export and Import Act and Canada's accession to the UNESCO Convention of 1970 would outline a very different scenario. The Act is not restricted to government property, but is extended to all illegally imported cultural objects, whether they are under private, institutional or public control.[152] Under these terms, regardless of the conditions of its initial sale, the Vasari would come under federal jurisdiction. As subject to both the Cultural Property Export and Import Act, and to the UNESCO Convention of 1970, it would have to be repatriated as a matter of law. While neither of these laws could be applied to the Vasari case retroactively, federal authorities nonetheless found a non-technical solution that produced the results these legal measures were intended to effect in the first place.

Granted that property ownership is provincially legislated, how, it may be asked, can a state enter into international agreements which it may not have the domestic authority to enforce? One of the principles of international law is that a federal government is responsible for the sub-divisions within the state, and can not use the shortcomings of its domestic laws or plead constitutional exceptions to extricate itself from living up to its international obligations.[153]

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[152] Article 31 (3), The Cultural Property Export and Import Act, Government of Canada Documents.

[153] S.A. Williams, The International and National Protection of Movable Cultural Property - A Comparative Study (Dobbs Ferry, New York: Oceana Publications, 1978) 77.

> The principle is well established that any sovereign state is obliged to meet its international obligations, whatever they may be, by formulating domestic laws sufficient to carry them out. Canada could not plead its constitution and could be internationally responsible for acts of its provincial authorities.[154]

In countering the Hungarian restitution claim, the discrepancy between the divisions of federal and provincial authority allowed the lawyers of the MMFA to maintain that the ownership of the Montreal museum was clearly established. In support of this argument they cited the concept of "prescription" from Civil Law, a legal framework applicable only in Quebec. According to this principle, clear ownership is established after a 3 year period of uninterrupted possession.

In a letter sent immediately after the 1964 Pantheon publication of the acquisition, the director of the BMFA, Dr. Klára Garas objected to the purchase of the Marriage Feast at Cana by the Montreal museum. However, in accordance with Quebec law at the time, the objection expressed only in a professional correspondence was insufficient. The BMFA should have challenged the Montreal museum's ownership in a Quebec court, thereby interrupting the ownership of the MMFA. Unfortunately, the curators at the Hungarian museum at the height of the Cold War were unsuccessful to secure the necessary political will and financial commitment to challenge the transaction in a Quebec court within the prescribed three year period.

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154 *Ibid.*

After decades of a protracted debate between the two institutions, a political opportunity presented itself to federal authorities that turned an informal, creative solution to a complex legal problem into the diplomatic formality of a "goodwill gesture." The repatriation of the Marriage Feast at Cana also became an example of avenues that can be explored to regain expropriated cultural property, even in the absence of applicable treaty provisions. While details of the arrangement between the Federal Government and the Montreal Museum of Fine Arts remained sketchy, it was revealed to the media, that an agreement was reached, whereby the National Gallery of Canada purchased the Marriage Feast at Cana from the MMFA for the symbolic price of one dollar.[155] With its ownership title transferred to a federal institution, the Canadian Government was now free to offer it as a gift of goodwill and diplomatic gesture to the visiting Hungarian Prime Minister. All was revealed of the financial details of the transaction, that the Montreal museum was "amply compensated" for its loss of the Vasari. Curiously enough, the same officials who rejected the Hungarian repatriation request in 1998 in Montreal, were now at the National Gallery, the institution instrumental in returning the Vasari painting to Hungary.[156]

Finally, the repatriation of the Marriage Feast at Cana also illustrates that the role of the media and the importance to control

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[155] C. Cobb, "An Old Master Goes Home," Ottawa Citizen 2 Nov. 1999: A1-2.

[156] Pierre Theberge, the director of the Montreal Museum of Fine Arts in 1998, was the head of the National Gallery by 1999. Mayo Graham, formerly the chief curator of the MMFA and on-camera spokesperson when the Vasari controversy was broadcast, has also moved to a curatorial position at the National Gallery.

the quality of information to sway public opinion can not be underestimated. Publicity perhaps has been the most important factor in the restitution of this painting. As the media attention on the MMFA has illustrated, one should not only act in an ethical way, but must also appear to do so. The threat to public reputations is a powerful weapon. Preserving a pristine reputation is particularly important to institutions whose main source of pride is derived from their status as keepers of human ideals expressed in material form.

CONCLUSION

The debate over the Marriage Feast at Cana, this small, previously obscure painting, began as an apparently simple property issue. It soon proved to be a conduit for discussions whose venues and scope have far superseded the local interests of both the Montreal, and the Budapest museums. As the painting gained international reputation as a *cause célebre* in the media, it brought to the fore a complex set of issues that are becoming, with increasing frequency, typical in repatriation cases worldwide.

Negotiating the restitution of cultural objects and more generally, the protection of cultural property, involves finding solutions to both practical concerns and matters of principle. An important source of disagreement in repatriation cases is the interpretation of past events by the parties involved. Deciding the custody of disputed objects involves a decision of whose interpretation of history, and whose patrimonial interests should be given preference. Likewise, the same objects may vary in meaning and significance to different parties, depending on whose "history" is used as a frame of reference.[157]

Another important factor affecting this debate has been the role of the two museums as sites which ideologically "framed" the work and where meaning was both created and reinforced. While both the Budapest and Montreal museum may follow apparently

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157 The inherent cultural relativism of this Post-Modern approach is not very useful in resolving such disagreements, as the underlying goal of all repatriation debates is to ultimately arrive at the truth.

similar models of display, their arguments in the debate over Vasari's Marriage Feast at Cana gave evidence to rather different interpretations of the function and social significance of the Vasari painting. The MMFA discounted factors such the origin and provenance of the work, relying on a traditional presentation of the work of art as aesthetic object, considering its value in terms of the abstract reality of the museum. The BMFA, while conscious of the painting's aesthetic value, chose to frame the object in terms of its historic role and patrimonial significance, which were, paradoxically, acquired within the traditional context of the museum.

The Vasari is one among a growing number of examples that demonstrate, how the restoration of stolen cultural property is becoming an important issue, recognized by both governments, and an increasing number of museums. From a pragmatic point of view, the return of the Marriage Feast at Cana to Hungary came to be used as a small instrument in the much broader context of the current trend towards the creation of a world-wide and politically centralized community, forged through economic, military and cultural alliances.[158]

As a matter of principle, Canada's solution to the Vasari conundrum joined other nations that chose to consider ownership issues in repatriation cases on the grounds of moral rights, finding ethical reasons more compelling than the defense of legal title based

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158 It is useful to remark here that, while countries such as Hungary that aspire to participate in, and benefit from, this global community subscribe to the idea that the free flow of information is a universally applicable sign of freedom, other nations see this phenomenon as the invasive force of cultural imperialism.

on the technicalities of law. Although there has been a promising progress in repatriation cases in the past decade, the process has been slow and fraught with obstacles stemming from the retentionist policies many museums are still clinging to.[159] However, some of these institutions have begrudgingly returned high profile, contentious ethnographic materials as well as works of art. Changes in museum policies, however, seem to be predominantly affected by outside political pressure in most places,[160] rather than by an ethically motivated approach to rethinking old models used in constructions of visual history.[161]

With the publicity surrounding the Vasari debate, the conduct of the MMFA at the 1963 acquisition procedure came under close public scrutiny. The Montreal museum was among the first institutions in Canada to take voluntary steps towards clarifying the authenticity of the provenances of its inventories. The first institution to do so was the Art Gallery of Ontario. Upon

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159 The British Museum Act (1963) places the general management and control of the British Museum into the hands of its twenty-five member Board of Trustees. Section 5 of the British Museum Act also imposes specific restrictions on the Board in the disposal of any object in the museum's collections. The Trustees of the museum are not permitted to allow deaccessioning of any object, unless it is a duplicate (1/a), dates to later than 1850 and exists in photocopied form (1/b), is unfit to remain in the collections (1/c), or has become "useless for the purposes of the Museum by reason of damage, physical deterioration, or infestation by destructive organisms (2)." "British Museum Act 1963," Statutes in Force (London: Her Majesty's Stationary Office 1979) 1-8.

160 An unnamed official in charge of the ethnography collection of a museum in Britain has been quoted to remark about repatriation as an issue, which has "become very politically correct. We can no longer resist returns in the way we could have done ten years ago, because there is political support for the repatriation campaign which wasn't there before." Museum Security Network. <http://www.museum-security.org/>.

161 Some fourty of Britain's museums recently have began a negotiation process to return disputed artifacts and human remains to their aboriginal owners. The most likely beneficiaries will be native Americans and Australian aborigines, groups that have been publicly campaigning for the return of such items for decades. The move follows a meeting between the Prime Ministers of Australia and Britain, as well as parliamentary hearings in Britain dealing with the repatriation of cultural artefacts amassed in colonial times.

examination of its collections the museum has discovered, and subsequently returned a number of pieces that proved to be war losses,[162] In December 2000, the National Gallery of Canada announced plans to review its artifact files with particular attention to those showing gaps in their documentations in the period between 1933 and 1945.[163] These institutions were also the first two among Canadian museums that established their own sites on the world wide web to make available information about works of art with incomplete or suspect provenances in their collections.[164] The MMFA followed suit almost immediately, and began work in tracing the histories of about 350 works of art, concerned, that its inventory may include Holocaust related losses.[165] In April 2001, the museum created its web site and began to post the results of its investigations, including images of the art works in question.[166]

As the Hungarian argument associated the Vasari painting with the highly charged issue of war-losses, the debate touched on the insufficiency of legal measures in curtailing the expanding worldwide problem of illicit traffic in cultural treasures. It also raised the question of the involvement of museums in perpetuating the illegal trade of art by their reluctance to enforce stringent

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162 The five 16th and 17th century Italian drawings were returned to the Berlin Museum in the summer of 1996. The AGO even insisted on covering the associated shipping costs. C. Arpin:"Museum Fights for Its Art," Montreal Gazette 28 Feb. 1998: A6.

163 Vera Frenkel, "Missing Art, Missing Lives," Globe and Mail 18 Dec. 2000: R4.

164 Speaking to the Globe and Mail in December 2000, Pierre Théberge, director of the National Gallery commented that full disclosure should now be part of the mandate of an art museum. Deirdre Kelly: "Nazi Plunder at National Gallery?" Globe and Mail 7 Dec. 2000: A5.

165 Globe and Mail 10 Jan. 2001: A6.

166 The site can accessed by visiting www.mbam.qc.ca/provenance/index.html. James Adams: "Museum Posts Possible Nazi Art," Globe and Mail 14 Apr. 2001: R5.

ethical codes in their acquisition procedures. By silently benefiting from the wartime thefts of art treasures, such institutions and private collectors have become morally complicit in those crimes: accessories after the fact. As long as there are eager buyers with the taste and budget for cultural rarities, there will also be mercenary dealers who will find ingenious ways to outwit cumbersome legislations and lumbering bureaucracies. Recognizing the often irreversible damage illegal traffic continues to pose to cultural property, a number of solutions have been proposed in recent years to curtail illicit trade and to extricate museums from the circuit perpetuating the problem.[167]

One proposal has been a worldwide moratorium declared on the acquisition of antiquities and indigenous art for a period of 20 or 30 years.[168] This would both remove museums from the current of illicit trade, and provide curators with ample opportunity to research, exhibit and publish new knowledge about their collections, many of which are merely warehoused out of sight, and remain as yet unresearched sources of potential knowledge. Another aspect of the problem, that of the individual seller or donor of unprovenanced or illegally imported works of art has also been examined. Owners of such works could not sell their property, and would not be able to receive a tax deduction should they choose to donate them.

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167 C.C. Coggins, "Proposal for Museum Acquisition Policies," International Journal of Cultural Property 7 (1998): 434-437.
168 *Ibid.* 436.

A third important issue that affected the Vasari case, is the secrecy that still shrouds most museum acquisitions. Opening to scrutiny the previously confidential files of publicly funded institutions would not only prove to be useful in reconstructing provenances and facilitate restitutions, but full disclosure would also have a deterrent effect. Such a move would also restore a degree of moral responsibility to museums, which, whether knowingly or not, have benefited from theft and war-losses. The obligation to do so have been articulated, among others, by Ori Soltes, the director of the National Jewish Museum in Washington D.C. by commenting that,

> . . . if museums are bastions of culture and civilization, and not operating in some moral backwater, they cannot say they have no responsibility to deal with these claims.. . . You cannot put a statute of limitation on such important moral issues.[169]

What a museum may lose from its collateral in repatriating displaced treasures, it could gain back in respect and in reputation. This, in turn, can facilitate future exchanges with other institutions which may also prove to be a generous compensation for lost assets.

Finally, if these changes are to take place it will also be necessary to re-examine the traditional construction of the museum's role as a mediator of high visual culture, and a revision of its display practices that reflect a change from old ideologies to new concerns incorporating the experiences of the recent past. The traditional approach of museums to presentation has been to

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169 W. V. Robinson, "New York DA Bars Return of Austrian Art," Boston Globe 9 Jan. 1998: A1.

divorce the object on display from all outside context, framing it purely in terms of its own aesthetic value and that of the internal categories of the museum, thereby denying its history and origins. This kind of treatment is arguably unethical, but seeks to be excused in the guise of the museum experience as an exercise in "high culture." The aesthetically elevating experience becomes a self-serving distraction from the often ignominious events that placed the object before the spectator in the first place. Rather than following this archaic model of object-centered museum display, new approaches to organizing exhibitions would integrate historical context and provenance, including illegal origins or even fraudulent documentation, into a new type of narrative.

These, of course, are highly contentious proposals. The art market and its validating institution, the art museum, have evolved in the domain of high culture and as spheres of activity have been for long the prerogatives of the social elite. At the same time, one's patronage or involvement in matters of beauty has also been equated with moral rectitude. Considering the frequency that tainted histories have come to light by a mere chance, full and systematic disclosure of complete provenances could jeopardize carefully crafted public reputations so that opposition from the inside circles to such proposals is hardly surprising.

The purpose of these proposed changes is not to conduct a retroactive witch-hunt of connoisseurs, or a persecution of dealers, buyers and donors, but to clarify the identities of displaced objects

and restore some legitimacy to their institutional display.[170] Museum visitors may gradually begin asking questions about where objects on display have originated or what hands they have gone through, transforming the act of viewing from silent aesthetic apprehension that stops at the surface, to a more informed, comprehensive experience.

This study examining the repatriation of Vasari's Marriage Feast at Cana, sought to present an historically inclusive study with contemporary relevance. Its goals have been to uncover some topical issues relating to the restitution of cultural property, and to examine a work of art whose role, meaning, and significance have been defined and altered by its changing social context. Likewise, the proposed goals of new museum narratives are motivated by similar concerns. Revealing the history of the object to the spectator should lead to the realization that works of art have a provenance, and that it is not always as untainted and glamorous as the reverential setting of museums tend to imply. Their stories are as varied and colorful as were the experiences of generations of human beings who left their imprint on them: those who made, used, worshipped, traded, coveted, and sometimes even stole them.

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170 C.C. Coggins, "Proposal for Museum Acquisition Policies," International Journal of Cultural Property 7 (1998): 437.

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